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Attorneys for Defendants,
CROSSMARK, Inc. and The Dannon Company, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KATHLEEN JOHNSTON, LORETTA	:	
WEIGNER, and JANICE	:	Civil Action No. 08-1525 (SDW)
FAHRENHOLTZ, on behalf of themselves	:	
and all others similarly-situated,	:	
	:	
Plaintiffs,	:	DECLARATION OF ELIZABETH BEDELL
	:	
v.	:	
	:	
CROSSMARK, INC., and THE DANNON	:	
COMPANY, INC.,	:	
	:	
Defendants.	:	

I, Elizabeth M. Bedell, declare as follows:

1. I am a citizen of the United States, and an adult over the age of twenty-one (21) years. I have never been convicted of a felony or of a crime involving moral turpitude. I make this Declaration of my own personal knowledge, and could and would testify competently to the matters set forth herein if called upon to do so.

2. I am counsel for CROSSMARK, Inc. and The Dannon Company, Inc. in this matter.

3. The document attached as Exhibit "5" is a true and correct copy of the excerpts from the November 24, 2008 deposition of Plaintiff Kathleen Johnston that are cited in Defendants' Response in Opposition to Plaintiffs' Motion for Conditional Certification and Notice to Proposed Class.

4. The document attached as Exhibit "6" is a true and correct copy of the excerpts from the November 24, 2008 deposition of Plaintiff Loretta Weigner that are cited in Defendants' Response in Opposition to Plaintiffs' Motion for Conditional Certification and Notice to Proposed Class.

5. The document attached as Exhibit "7" is a true and correct copy of the excerpts from the December 11, 2008 deposition of James Postiglione that are cited in Defendants' Response in Opposition to Plaintiffs' Motion for Conditional Certification and Notice to Proposed Class.

6. The document attached as Exhibit "8" is a true and correct copy of Defendants' Modified Notice.

7. The document attached as Exhibit "9" is a true and correct copy of Defendants' proposed consent form.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Dallas, Texas on this 12 day of December, 2008.


Elizabeth M. Bedell

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

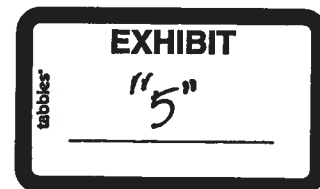
KATHLEEN JOHNSTON, LORETTA)	
WEIGNER and JANICE FAHRENHOLTZ,)	
on behalf of themselves and)	
all others similarly situated,)	
)	
d)	
)	
Plaintiffs,)	
)	
vs.)	No. 08-1525
)	(SDW)
CROSSMARK, INC., and the)	
DANNON COMPANY,)	
)	
)	
Defendants.)	
-----)	

DEPOSITION OF KATHLEEN JOHNSTON

Princeton, New Jersey

Monday, November 24, 2008

Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 19835



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November 24, 2008
8:30 a.m.

Deposition of KATHLEEN JOHNSTON,
held at the offices of Mason Griffin, 101
Poor Farm Road, Princeton, New Jersey,
pursuant to Notice, before Francis X.
Frederick, a Certified Shorthand
Reporter, Registered Merit Reporter and
Notary Public of the States of New York
and New Jersey.

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PROCEEDINGS

MR. FOX: And before we start
asking questions, Wayne, I just want to
confirm that we're going to -- that the
examination, while it might touch upon
the fact that Ms. Johnston is no longer
employed by or working for Crossmark,
that we're not going to address today the
retaliation claim that Ms. -- or claims
that Ms. Johnston has asserted against
Crossmark.

MR. BOZEMAN: Correct. And we've
agreed to -- that the deposition will be
limited to three hours or thereabouts and
that it will deal with the issues
surrounding conditional certification.

MR. FOX: Yes. That's agreed.

MR. BOZEMAN: Okay.

* * *

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APPEARANCES:

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BY: STEPHEN E. FOX, ESQ.

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KATHLEEN JOHNSTON, called as
a witness, having been duly sworn by a
Notary Public, was examined and
testified as follows:

EXAMINATION BY

MR. FOX:

Q. Would you please state your name?

A. Kathleen Marie Johnston.

Q. Ms. Johnston, my name is Steve Fox
and I represent Crossmark, Inc. and Dannon
Corporation in a lawsuit that you've brought
against them.

Before we begin asking questions
about the substantive nature of the lawsuit,
let me ask you a couple of background
questions. Have you ever been deposed before?

A. No.

Q. So that the process will go
smoothly between us let me see if we can have
some ground rules between the two of us.

A. Okay.

Q. First of all, will you permit me
to finish answering a question before we
begin -- will you agree to let me finish

2 (Pages 2 to 5)

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K. JOHNSTON

should be a class between January 2006 and September 2008.

One more time.

The request is that a class be certified for the time period January 2006 to September 2008. I know that you left the company in May of 2008.

A. Um-hum.

Q. Did you use SalesTrak to report time worked between January 2006 and May of 2008?

A. Of course.

Q. You personally recorded or entered the minutes that you worked in SalesTrak, correct?

A. Yes.

Q. You didn't have somebody else do it for you?

A. No, no, no, no. I did it myself.

Q. It was your responsibility, was it not, to ensure that the time was entered accurately in SalesTrak?

A. Let me put it to you this way. I entered it accurately. Where it went and how

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K. JOHNSTON

it went was on them.

Q. But we can agree, can we not, that you understood it was your responsibility to accurately enter time in SalesTrak?

A. Correct. Right. And I believe I did to the best of my ability.

Q. During this same time period, January 2006 to May of 2008, Crossmark used a software program called Lawson to pay retail representatives, correct?

A. I guess. I don't know how they do payroll but that's what we used, yes.

Q. You've heard the term Lawson?

A. Yes.

Q. What did you understand this Lawson program to do or be?

A. You know what? I didn't give any thought to it. I'm not a computer programmer. I was given very little training. I did what I was supposed to do on my part. How it works, I'm not supposed to -- I don't know.

Q. Okay. Did you understand while you worked for Crossmark between January of 2006 and May of 2008 that Lawson would take

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K. JOHNSTON

minutes that you recorded in SalesTrak and convert those minutes to hours worked?

A. Like I said, I did the principles, the basic principles. How it exactly works, I don't know.

Q. Okay. We're on the same page. I'm not asking you how the logarithms -- the algorithm worked; just that you understood that Lawson did some conversion from the SalesTrak information.

A. Right. But, like, you know, being an honest person you expect to be paid exactly to the minute so I trusted them to pay us exactly to the minute.

Q. So if you entered 90 minutes of work time in SalesTrak that time should be converted into 1.5 hours in Lawson, correct?

A. Again, I don't know how it works.

Q. Can you describe the computer error that you claim resulted in pay shortages for you and the proposed class members?

A. I don't know anything about a computer error other than my paycheck was always shorted five minutes. You're asking me

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K. JOHNSTON

how it works. I don't know how the Lawson works.

Q. If you understood my question to be that then I apologize because I'm not actually asking you to help me understand how the conversion process worked.

I just want to know from you what do you believe occurred with respect to this alleged computer error.

A. What do I believe occurred?

Q. Yes, ma'am.

A. I believe they would always round you down to save money. It was done on purpose. That's what I believe.

Q. Is it your testimony for every week that you entered time into SalesTrak that you were shorted pay?

A. Yes.

Q. So your contention is that this computer problem always benefited Crossmark.

A. Yes.

Q. Have you ever reviewed or compared your own SalesTrak report and your Lawson payroll record to determine that the computer

11 (Pages 38 to 41)

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1 K. JOHNSTON
 2 A. Oh, I see where you're going. No.
 3 Just to be at the meeting.
 4 Q. Okay.
 5 A. Um-hum.
 6 Q. So you don't perform services for
 7 Crossmark -- you never performed services for
 8 Crossmark in states other than Pennsylvania
 9 and New Jersey.
 10 A. Correct.
 11 Q. Do you and every retail
 12 representative that you seek to represent in
 13 this lawsuit perform exactly the same duties
 14 on a daily basis?
 15 A. No. You know why? Could I
 16 explain that?
 17 Q. Yes, ma'am.
 18 A. Everybody does things differently.
 19 I might check my voice mails ten times a day.
 20 Somebody else might check them two times a
 21 day. Basically the job is the same. But
 22 people do it differently.
 23 Q. Now, are you saying that people
 24 who work, for instance -- let me start over
 25 again.

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1 K. JOHNSTON
 2 Are you saying retail
 3 representatives who work for Crossmark in, for
 4 instance, California and Texas perform exactly
 5 the same retail representative
 6 responsibilities that you perform in
 7 Pennsylvania and New Jersey?
 8 A. Oh, I'm sorry. I thought we were
 9 just talking about the Dannon team.
 10 Q. I'm sorry. That was my mistake.
 11 So let me try to explain it further or ask it
 12 better.
 13 Do you know what responsibilities
 14 are performed by Crossmark retail
 15 representatives who do not work on the Dannon
 16 dedicated team?
 17 A. No.
 18 Q. Do you know what hours are worked
 19 by Crossmark retail representatives who do not
 20 work on the Dannon dedicated team?
 21 A. No.
 22 Q. Do you know what hours retail
 23 representatives who were not on the Dannon
 24 dedicated team, what hours they worked between
 25 January 2006 and May of 2008?

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1 K. JOHNSTON
 2 A. No.
 3 Q. Let me go back to the
 4 responsibilities question.
 5 A. Um-hum.
 6 Q. Between January 2006 and May of
 7 2008, do you know what job responsibilities
 8 were performed by Crossmark retail
 9 representatives who did not work on the Dannon
 10 dedicated team?
 11 A. No.
 12 Q. Do you know whether this computer
 13 rounding error, to call it that, was
 14 experienced by Crossmark retail
 15 representatives who did not work on the Dannon
 16 dedicated team?
 17 A. Okay. I know nothing about other
 18 teams.
 19 Q. Retail representatives on the
 20 Dannon dedicated team used hand-held devices
 21 to perform certain administrative functions,
 22 correct?
 23 A. Yes.
 24 Q. To what extent do retail
 25 representatives who are not Dannon team

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1 K. JOHNSTON
 2 members use hand-held devices, if at all?
 3 A. As I said, I don't know what other
 4 divisions, what they do. Also depends on
 5 supervisors, too. What's expected of them.
 6 Q. Did you ever ask or talk to anyone
 7 at Crossmark about this alleged computer time
 8 keeping problem?
 9 A. Other than that POD meeting where
 10 they were talking, no.
 11 Q. Did you ever speak to a supervisor
 12 or manager at Crossmark about this alleged
 13 computer time keeping problem?
 14 A. Yes.
 15 Q. Who?
 16 A. I talked to Izabela about it.
 17 Q. Tell me about that conversation.
 18 How did it come up and what did you say and
 19 what did she say?
 20 A. Izabela was a lovely woman but she
 21 knew nothing about anything. I mean, she
 22 would just kind of laugh at you and brush you
 23 off and be like, Um-hum, I don't know, you
 24 know. Why are we getting shorted. I don't
 25 know.

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K. JOHNSTON

Probably the most reliable was the e-mail from Dwayne Hamilton saying that it was a computer error. That was pretty much black and white. It said what the cause of it was.

So...

Q. So let me go back to your conversation with Izabela.

A. Um-hum.

Q. Did you ask her about this alleged computer time keeping error?

A. Yes.

Q. What did you ask her?

A. I asked her why we're getting shorted five minutes, you know, in the paycheck. And she just had no answer.

Q. When did you ask her that?

A. When?

Q. Yes, ma'am.

A. I don't remember when. At some point. She wasn't with us very long.

Q. And how did she respond to your question?

A. Ridiculously. She giggled. Like she did most of the time when you asked her

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K. JOHNSTON

something.

Q. Did she tell you she wasn't aware of any error?

A. Yes.

Q. Other than talking to Izabela, did you talk to any other Crossmark manager or supervisor about the alleged computer time keeping problem?

A. Not to my knowledge, no. I didn't really have contact with anybody. I only saw Betty maybe once a year, twice a year.

Q. Separating this e-mail that you've mentioned a couple of times from Dwayne Hamilton, what other personal knowledge do you have that Crossmark knew about the alleged computer time keeping problem prior to the filing of your lawsuit?

A. Run that past me one more time, please.

Q. Yes, ma'am. I'm putting aside the Dwayne Hamilton e-mail that you mentioned.

A. Right. I got that.

Q. What personal knowledge do you have that Crossmark knew about the alleged

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K. JOHNSTON

computer time keeping problem prior to the filing of your lawsuit?

A. I have no knowledge. Other than that e-mail which said it in black and white.

Q. When that e-mail --

MR. FOX: It's been produced in the lawsuit, right?

MR. BOZEMAN: Yeah.

MR. FOX: Okay. I think I know the one we're talking about.

MR. POWELL: It was forwarded, forwarded, and then it was there so it

wouldn't be at the top of the e-mail. It was forwarded by several employees to us.

MR. FOX: Okay.

BY MR. FOX:

Q. So let's move on and discuss your allegations about unpaid administrative time.

A. Okay.

Q. Can you describe for me the administrative tasks that you performed at the beginning of each workday during your employment with Crossmark.

A. Okay. Basically you would have to

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K. JOHNSTON

synch the scanner in the morning. Check e-mails, voice mails, before you got to your first store.

Q. Anything else?

A. No. That's pretty much it.

Assuming you synch right.

Q. Could you dis -- well, how long did it take you to synch the scanner?

A. They had a lot of problems with it so it could take anywhere from five minutes to not working at all.

Q. But when it worked --

A. On a good day --

Q. It took five minutes?

A. -- five reasons ten minutes, yeah.

Q. Okay.

A. On a bad day, like I said, you could sit there for hours and it wouldn't synch.

Q. You didn't sit there for hours and let it synch, did you?

A. Usually I gave up. See, the first hour's on us at the store. I liked to have started at 7:00. Every day 7:00 I was in my

15 (Pages 54 to 57)

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1 K. JOHNSTON
2 that you spend performing administrative
3 tasks?

4 A. Verbally they always said no
5 overtime. But then they'd ask you to do
6 things that they knew were going to take
7 longer so...

8 Q. Did anybody tell you that you were
9 not to accurately record the time that you
10 spent performing administrative tasks at the
11 beginning of your workday and at the end of
12 your workday?

13 A. Run that past me one more time. I
14 just want to make sure I heard it the way I
15 heard it.

16 Q. Did anybody at Crossmark tell you
17 that you were not to accurately record the
18 time you spent performing administrative tasks
19 at the beginning of your workday and at the
20 end of your work day?

21 A. Let me put it to you this way. It
22 was never put to you don't do it but it was
23 very much insinuated that you got 30 minutes a
24 day and that's all it better take.

25 Q. Did you --

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1 K. JOHNSTON

2 A. Now a lot of -- go ahead.

3 Q. Did you ever report more than --
4 did anybody ever complain to you about your
5 recording of administrative tasks at the
6 beginning of the workday or the end of the
7 workday?

8 A. Me, personally, no. Because I
9 always stayed within what they asked me to do
10 and I just worked the extra on myself and just
11 didn't get paid for it. You know what I'm
12 saying?

13 Q. How is it that you had this
14 understanding that you were supposed to report
15 only 30 minutes a day in administrative time
16 for administrative tasks performed at the
17 beginning and end of the workday?

18 A. It was verbally told to us on a
19 meeting.

20 Q. Who said that?

21 A. Christian Garcia. And then it was
22 understood that if your packet came in with
23 the retail ready book and your were to do that
24 you could pretty much take 90 minutes and then
25 you could pretty much take extra time on a

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1 K. JOHNSTON

2 Friday also. I believe that was 90 minutes on
3 Friday total.

4 See, I don't know. They would
5 tell you one thing. Then the next meeting
6 they might tell you the week before, okay,
7 take 90 minutes on a Friday. The next meeting
8 they might say, you know what, take 60 minutes
9 on a Friday. They would never give you
10 anything in writing which would have been
11 helpful because then you could have followed
12 that in black white instead of like he said
13 this, now he's saying this.

14 Q. Now, you said a couple of times in
15 that answer that "they" said this and "they"
16 said that. Who's "they"?

17 A. Christian Garcia and sometimes
18 etty Beatie. Like, they would contradict
19 each other. One time Betty would tell you
20 something or on the same conference call
21 Izabela would say something that would
22 contradict Betty.

23 Q. Well, what we're focusing on right
24 now is the recording of the time for
25 performing administrative tasks.

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1 K. JOHNSTON

2 A. Right. I was always told 30
3 minutes.

4 Q. Who told you that?

5 A. Christian Garcia. He was the man
6 who hired me.

7 Q. Mr. Garcia worked on the Dannon
8 dedicated team, correct?

9 A. Yes. He was the supervisor.

10 Q. Did anybody else besides Mr.
11 Garcia allegedly tell you that you were only
12 to report -- well, let me start over again.

13 Did you ever ask anybody at
14 Crossmark -- let me rephrase it one more time.

15 Did you ever tell anybody at
16 Crossmark that you were spending more than 30
17 minutes a day performing administrative tasks
18 at the beginning of the workday and at the end
19 of the workday?

20 A. Yes.

21 Q. Who?

22 A. I would complain to anybody who
23 would listen.

24 Q. Who?

25 A. I mentioned it to Izabela that you

18 (Pages 66 to 69)

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1 K. JOHNSTON
 2 could not possibly get the work done in all
 3 the time. I mentioned it to Dan on the Dannon
 4 team I believe.
 5 Q. What's Dan's last name?
 6 A. I don't remember.
 7 THE WITNESS: Do you remember?
 8 MR. POWELL: Dan...
 9 Q. Is he a Dannon employee or a
 10 Crossmark employee?
 11 A. No. He's Dannon.
 12 Christian Garcia when I first
 13 started I mentioned. I've mentioned it to
 14 other sales reps. Like questions. Like does
 15 this take you so long. This is taking me
 16 forever. And, you know, that type of thing.
 17 Mostly supervisors, though, because I rely on
 18 their professional opinion how to get the job
 19 done more efficiently in less time.
 20 Q. When did Mr. Garcia allegedly tell
 21 you that you were not to record all -- or you
 22 couldn't record more than 30 minutes a day --
 23 A. On one of the conference calls.
 24 Q. When?
 25 A. I have no clue. On one of them at

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1 K. JOHNSTON
 2 some point.
 3 Q. And what did he say on this
 4 conference call?
 5 A. Dannon would like us to take 30
 6 minutes. Total admin time.
 7 Q. Do you have any proof that Mr.
 8 Garcia made that statement to anybody other
 9 than retail representatives who were working
 10 on the Dannon dedicated team?
 11 A. Do I have any proof that he said
 12 it?
 13 Q. To people who were not on the
 14 Dannon dedicated team.
 15 A. No.
 16 Q. Do you have any proof that
 17 supervisors other than Mr. Garcia made similar
 18 statements to their employees?
 19 A. No.
 20 MR. BOZEMAN: Counsel, do you
 21 think we could take just a short break?
 22 Five minutes?
 23 MR. FOX: Can I get through this
 24 exhibit, Wayne, and then we will actually
 25 be off this topic and then we can take a

1 K. JOHNSTON
 2 break and move on to something else.
 3 MR. BOZEMAN: You can. Sure.
 4 (Defendant's Exhibit 2, document
 5 entitled SalesTrak Web View Payroll
 6 Solution Training Dedicated Teams, marked
 7 for identification as of this date.)
 8 BY MR. FOX:
 9 Q. Ms. Johnston, I've handed you what
 10 we've marked as Exhibit 2.
 11 A. Um-hum.
 12 Q. Is this a -- it appears to be a
 13 Powerpoint presentation called SalesTrak Web
 14 View Payroll Solution Training Dedicated
 15 Teams.
 16 Do you see that?
 17 I'm looking at the first page.
 18 A. Okay.
 19 Q. Have you -- let me give you as
 20 much time as you need, 30 seconds, you want a
 21 couple minutes to look at this. Have you seen
 22 this document before today?
 23 (Document review.)
 24 A. This might have been something
 25 that they gave us with the five minutes of

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1 K. JOHNSTON
 2 training with the scanner.
 3 Q. Well, do you recall when you first
 4 began using SalesTrak and the scanner that
 5 there was a presentation about how to use the
 6 scanner and how to use SalesTrak?
 7 A. There was about a half an hour,
 8 maybe -- I'll give them the benefit of the
 9 doubt -- maybe hour training course. And we
 10 couldn't even use the syncher because it
 11 wasn't hooked up. They had one like on the --
 12 above like the projector.
 13 Q. Yes, ma'am.
 14 A. The training was very inaccurate.
 15 It didn't seem like any of the supervisors
 16 knew how to use the scanner.
 17 Q. You know what? I want to separate
 18 the scanner training from the use of SalesTrak
 19 training because I think this presentation
 20 just focuses on the use of SalesTrak.
 21 A. Oh, okay.
 22 Q. Do you recall being trained about
 23 how to use SalesTrak?
 24 A. No. When I was first hired,
 25 Christian -- I met him at the office in Exton

19 (Pages 70 to 73)

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1 K. JOHNSTON
 2 A. But I believe it was on the 27th.
 3 Q. Okay.
 4 MR. BOZEMAN: 28th.
 5 THE WITNESS: 28th?
 6 Q. So it was the 28th?
 7 A. You know what? It was a hard day.
 8 Q. Okay.
 9 A. I was shocked.
 10 MR. FOX: Well, let me put that
 11 aside and we'll leave that for later.
 12 Q. Do you have any personal knowledge
 13 that any retail representatives on teams other
 14 than the Dannon dedicated team were not
 15 recording administrative time that exceeded 30
 16 minutes at the beginning and end of the
 17 workday?
 18 A. I could only speak for myself. I
 19 have no knowledge of what everybody else does.
 20 Q. Let me ask you even more
 21 specifically and about the Dannon dedicated
 22 team.
 23 A. Okay.
 24 Q. Do you have any personal knowledge
 25 that retail representatives who served on the

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1 K. JOHNSTON
 2 Dannon dedicated team were not following
 3 Crossmark's policy of reporting all
 4 administrative time?
 5 A. So basically you're asking me if
 6 reps told me that they spent more time working
 7 than they reported; is that what you're asking
 8 me?
 9 Q. Let's break it up. We'll answer
 10 that question -- let's go with that question
 11 first.
 12 What retail representatives told
 13 you that they were not recording all of the
 14 administrative time that they worked at the
 15 beginning or end of the workday?
 16 A. Well, I would say Lori has told me
 17 she's put in extra time. Cathy Lombardi.
 18 Janice. Don't ask me what her last name is.
 19 Q. Janice Fahrenholtz?
 20 A. Yeah. She mostly had problems
 21 with the scanner and calling into the help
 22 desk. Other reps that I have heard complain
 23 at POD meetings like, Oh, I'm doing this, I'm
 24 doing that, so much extra printing time. But
 25 I couldn't give you names.

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1 K. JOHNSTON
 2 Q. Do you know whether -- other than
 3 the communication that you had with Mr. Garcia
 4 in which he said that Dannon wanted to keep
 5 administrative time to 30 minutes, do you know
 6 who else he allegedly made that statement to
 7 on the Dannon dedicated team?
 8 A. Well, it was on a business meeting
 9 call.
 10 Q. So who was on that call besides
 11 you and Mr. Garcia?
 12 A. Should be the whole team.
 13 Q. Who was part of the team at the
 14 time?
 15 A. Al Gallion, Lori, Cathy Lombardi,
 16 Lisa -- oh, I don't know her last name. No, I
 17 don't know if Lisa was there. She might have
 18 started after that. I don't know. Whoever
 19 was on the Dannon team at the time.
 20 Q. But you can't identify those
 21 people right now.
 22 A. Just the ones that I did.
 23 Q. Al, Lori and Cathy are the only
 24 ones that you've identified.
 25 A. Oh, Janice. She's been with the

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1 K. JOHNSTON
 2 team a long time. There was a Lisa that was
 3 on our team for a while. Rose. Oh, what's
 4 that man's name? The other one. A very nice
 5 man. I can see his face but I'm not sure of
 6 his name.
 7 Q. Have you ever spoken to any retail
 8 representatives who were not on the Dannon
 9 dedicated team about whether they report time
 10 spent on administrative tasks at the beginning
 11 and end of the workday?
 12 A. No.
 13 Q. Have you ever spoken to any retail
 14 representatives who were not on the Dannon
 15 dedicated team about whether they actually
 16 report all time spent on administrative tasks
 17 at the beginning and end of the workday?
 18 A. No.
 19 Q. So the allegation that you
 20 asserted against Crossmark about not paying
 21 you for performing administrative tasks at the
 22 beginning and end of each workday is unique to
 23 you and to the people who worked on the Dannon
 24 dedicated team, correct?
 25 A. I wouldn't say that. I don't

21 (Pages 78 to 81)

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1 K. JOHNSTON
 2 know. I would assume that everybody that was
 3 full time was getting -- I don't want to say
 4 ripped off five minutes. I don't know a nice
 5 way to put it.
 6 Q. I'm talking about the
 7 administrative task recording. What proof do
 8 you have --
 9 A. Oh, what proof.
 10 Q. What proof do you have that
 11 persons who did not work on the Dannon
 12 dedicated team --
 13 A. None.
 14 Q. -- were instructed not to record
 15 administrative time exceeding 30 minutes?
 16 A. Right. I don't.
 17 Q. Did you ever ask anybody at
 18 Crossmark about what Crossmark's policy was
 19 with respect to accurately recording all time
 20 that you spent performing administrative
 21 tasks?
 22 A. Of course. A supervisor.
 23 Christian. And Izabela.
 24 Q. And I'm not trying to quibble with
 25 words but I am trying to be a little bit

1 K. JOHNSTON
 2 A. No response. None to my knowledge
 3 that I remember.
 4 Q. Okay.
 5 MR. FOX: Why don't we take a
 6 five-minute break.
 7 (Recess taken.)
 8 BY MR. FOX:
 9 Q. Let's pick up where we were.
 10 Did you ever record administrative
 11 time exceeding 30 minutes for the tasks that
 12 you performed at the beginning of the workday
 13 ask at the end of the workday?
 14 A. The only time when it was okayed
 15 by them to put down extra time. The
 16 supervisors.
 17 Q. Okay. On what occasions was it
 18 okayed by the supervisors -- given that the
 19 policy said you're supposed to record all
 20 administrative time, but putting that aside,
 21 to what extent did they okay you to put down
 22 more than 30 minutes administrative time?
 23 A. I believe maybe twice the whole
 24 time I was working full time for overtime due
 25 to a mapping project.

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1 K. JOHNSTON
 2 careful with my words.
 3 A. Okay.
 4 Q. You told me that he said that
 5 Dannon didn't really want people recording
 6 more than 30 minutes in administrative time
 7 during each workday, correct?
 8 A. They liked -- he said Dannon would
 9 like us to stick within the 30 minutes, yes.
 10 Q. Okay. Did anybody say but what if
 11 it takes longer?
 12 A. Yes.
 13 Q. Who?
 14 A. Oh, I don't know. I just heard a
 15 voice on the other end of the phone in the
 16 meeting.
 17 Q. And did Mr. Garcia respond if it
 18 takes longer you have to record it accurately
 19 because that's our policy?
 20 A. I've never heard that from anybody
 21 that worked in that company. Sorry.
 22 Q. All right. If somebody actually
 23 said that then, during the conversation, that
 24 is that what happens if it takes you longer
 25 than 30 minutes, what was the response?

1 K. JOHNSTON
 2 Q. Now, let me make sure if I get --
 3 let me make sure I'm getting this clearly from
 4 you.
 5 Nobody ever told you that you
 6 could not report more than 30 minutes
 7 administrative time for tasks performed at the
 8 beginning and at the end of the workday,
 9 correct?
 10 A. No. You couldn't because that
 11 would kick you into overtime. So you could
 12 not report your accurate time.
 13 Q. Let me make sure I got this right.
 14 You told us earlier that Mr.
 15 Garcia said that Dannon would like, and I put
 16 that in capitals and highlight, would like the
 17 representatives to keep the administrative
 18 time to 30 minutes.
 19 A. Right.
 20 Q. My question is a little different
 21 now.
 22 A. Okay.
 23 Q. You were never told that you could
 24 not write down more than 30 minutes of
 25 administrative time for tasks spent at the

22 (Pages 82 to 85)

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K. JOHNSTON

Q. On average how long did it take you to drive from your home to your first work location at the beginning of the workday?

A. Well, that depended. I had some stores that were five minutes away. And I had other stores that were an hour away or more. When I did the South Jersey route that was longer.

Q. So it varied depending upon your territory.

A. Right.

Q. And the stores that you were assigned at that -- any given time.

A. Right. What they wanted us to do and encouraged us to do was to do a local store first, say -- I'm sorry. A further away store first. So, in other words, they would encourage me to go to Quakertown and work my way back as opposed to going to say, Fairless Hills which is five minutes away and clocking from there.

Q. If it took you longer than one hour to drive from your home to your first work location Crossmark compensated you for

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K. JOHNSTON

the time spent driving that exceeded one hour, correct?

A. Correct.

Q. So when you reported your time worked in SalesTrak you would record any drive time that exceeded one hour if it was this -- and if that hour -- let me start over again.

When you recorded time in SalesTrak you would record drive time that exceeded one hour at the beginning of the workday as drive time, correct?

A. Right.

Q. Now, you are seeking to represent a class of retail representatives from across the country who worked for or who still work for Crossmark between January 2006 and September 2008.

What proof do you have that it took all of the retail representatives that you are seeking to represent in this collective action the same amount of time to drive from their home to their first work location at the beginning of the workday?

A. Again, I'm only speaking for

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K. JOHNSTON

myself. By seeking -- this is kind of throwing me off a little bit about me seeking to prove what it is at other divisions. When I started this, it was for myself. I'm only speaking for myself.

Q. So you don't have any proof about -- or you don't have any knowledge of what retail representatives, for instance, in California or Texas, how long --

A. Other than the Dannon team --

Q. Hang on. Let me finish my question.

The knowledge you have is Dannon dedicated team focused, correct?

A. Correct.

Q. It's only what happened with the Dannon dedicated team, correct?

A. Correct.

Q. All right. Now, do you have any knowledge of the drive time efforts that retail representatives outside of the Dannon dedicated team had to undertake?

A. No. But the fact that the Dannon dedicated team is in other states like DC,

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K. JOHNSTON

Virginia, they had told me a little bit about their schedules and how it was extra driving time.

Q. Who told you that?

A. Rose lives further. Lisa who's no longer with the company. There's another rep that -- her territory is very, very country. She actually stays overnights but I don't know her name.

Q. What did Rose tell you about driving time?

A. Well, just that there's a lot of drive time involved at times. You know, to get from one store to another.

Q. What did Lisa tell you about drive time?

A. The same thing. That there was times where it just took longer or you run into traffic.

Q. Both Rose and Lisa work on the Dannon dedicated team?

A. No. Lisa's no longer with the dedicated team.

Q. Did both Rose and Lisa work on the

24 (Pages 90 to 93)

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1 K. JOHNSTON

2 Dannon dedicated team?

3 A. Rose is still with them but Lisa
4 is gone.

5 Q. But Lisa used to work on the
6 Dannon dedicated team?

7 A. Yes, yes.

8 Q. In performing your job duties as a
9 retail representative was it your practice to
10 stay at the same work location throughout the
11 day?

12 A. No. We had to move around.

13 Q. So you typically traveled to a
14 different work location during the same day?

15 A. Correct.

16 Q. Are you claiming that Crossmark
17 failed to compensate you for the time spent
18 driving to a second, third or more work
19 location after you arrived for work at your
20 first location?

21 A. No. From store to store they
22 would cover that.

23 Q. Okay. When you reported your time
24 worked in SalesTrak, you would record the time
25 spent driving between work locations as drive

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1 K. JOHNSTON

2 time, correct?

3 A. I'm sorry. Run that past me
4 again.

5 Q. When you reported your time in
6 SalesTrak, you recorded the time that you
7 spent driving between work locations; that is,
8 after you arrived at the first location.

9 A. Right. And anything extra to the
10 first store. Say, if it was over an hour.

11 Q. So let's break that down. If it
12 was more than an hour you recorded -- if it
13 took you longer than one hour to drive to your
14 first work location, then you recorded into
15 SalesTrak as drive time the amount of time
16 that exceeded the hour.

17 A. Right. Like when I did West Long
18 Branch it took me an hour and a half. So the
19 last half hour I would add towards the
20 store-to-store.

21 Q. All right. And then when you
22 drove between work locations during the
23 workday, that is after you arrived at the
24 first work location, you would record the
25 drive time between different work locations as

1 K. JOHNSTON

2 drive time.

3 A. Correct. And anything extra like
4 that extra half an hour, yes.

5 Q. Yes, ma'am. And at the end of the
6 workday when you returned home from your final
7 work location, if it exceeded an hour, you
8 would record whatever exceeded as drive time.

9 A. Yes.

10 Q. So on average can you give me an
11 estimate of the amount of time that it took
12 you to drive to your first work location at
13 the beginning of the workday?

14 A. Again, I can't. It would vary.

15 Q. What about at the end of the
16 workday; can you give me an average of the
17 amount of time that it took you to drive from
18 your last work location to your home?

19 A. Again, it would depend. I always
20 tried to work the furthest and then work my
21 way back home. So sometimes that would be
22 five minutes from my house. Sometimes it
23 might be a half an hour from my house.
24 Depending on, you know, what my route was that
25 day.

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1 K. JOHNSTON

2 (Defendant's Exhibit 4, document
3 entitled Crossmark Full-time Associate
4 Policy Manual May 2004, marked for
5 identification as of this date.)

6 (Defendant's Exhibit 5, Employment
7 Acknowledgement bearing production number
8 CMK 000397, marked for identification as
9 of this date.)

10 (Defendant's Exhibit 6, Drive Time
11 and Business Mileage Reimbursement Policy
12 bearing production numbers CMK 000317
13 through CMK 000320, marked for
14 identification as of this date.)

15 BY MR. FOX:

16 Q. Okay. Ms. Johnston, I've handed
17 you what we've marked as Exhibit 4 which is
18 entitled Crossmark Full-Time Associate Policy
19 Manual, May 2004.

20 Do you see that?

21 A. Correct.

22 Q. Do you recall receiving a copy of
23 this manual during your employment with
24 Crossmark?

25 A. Well, I didn't get a chance to

25 (Pages 94 to 97)

<p style="text-align: right;">Page 102</p> <p>1 K. JOHNSTON</p> <p>2 the time that you spent commuting from your</p> <p>3 home to your first work location and then</p> <p>4 commuting by returning home from your last</p> <p>5 work location?</p> <p>6 A. In my mind, and this is just my</p> <p>7 opinion, if I'm getting up on my time early</p> <p>8 and synching the computer, I don't understand</p> <p>9 why the day doesn't start the minute I synch</p> <p>10 their scanner in. A lot of times, like I told</p> <p>11 you, it didn't work right and it would put me</p> <p>12 behind in traffic to get to my first location.</p> <p>13 And that's the point I brought up to Izabela.</p> <p>14 I'm, like, I don't understand this. I mean,</p> <p>15 I'm up -- I'm already working. I'm already</p> <p>16 checking e-mails before I even get to the</p> <p>17 first store. How is that not considered</p> <p>18 working and why isn't that paid for?</p> <p>19 Q. Now, you say you spoke to Izabela.</p> <p>20 A. Yes. At some point.</p> <p>21 Q. When did you talk to Izabela about</p> <p>22 drive time?</p> <p>23 A. At some point when she was the</p> <p>24 supervisor.</p> <p>25 Q. Did you ever speak to Mr. Garcia</p>	<p style="text-align: right;">Page 104</p> <p>1 K. JOHNSTON</p> <p>2 Beatie, no.</p> <p>3 Q. So tell me about this conversation</p> <p>4 that you had with Izabela about drive time</p> <p>5 pay?</p> <p>6 A. I don't really recall it.</p> <p>7 Q. Your claim was that you began your</p> <p>8 workday when you began synching and so you</p> <p>9 thought that the workday should continue all</p> <p>10 the way through your arrival at the first work</p> <p>11 location and, therefore, you should be paid</p> <p>12 for your driving.</p> <p>13 A. Right.</p> <p>14 Q. What did she say to you when you</p> <p>15 raised that?</p> <p>16 A. She giggled.</p> <p>17 Q. Did you ask her to follow up with</p> <p>18 any other manager or supervisor at Crossmark?</p> <p>19 A. Never heard from her --</p> <p>20 Q. Did you ask her to follow up?</p> <p>21 A. Yes, I did. But I never heard</p> <p>22 from her.</p> <p>23 Q. Did you ever follow up with her?</p> <p>24 A. You know, after a while she was so</p> <p>25 experienced we just stopped asking questions.</p>
<p style="text-align: right;">Page 103</p> <p>1 K. JOHNSTON</p> <p>2 about drive time pay?</p> <p>3 A. Yes, I did. Because when my route</p> <p>4 changed and I was going very far I couldn't</p> <p>5 understand why they didn't have me a little</p> <p>6 bit closer stores.</p> <p>7 Q. Did you ever talk to Mr. Garcia</p> <p>8 about being paid for your drive time; not just</p> <p>9 that it took you longer to drive to your first</p> <p>10 location, or the territory was larger, but</p> <p>11 rather did you raise with him the issue of</p> <p>12 drive time pay?</p> <p>13 A. Christian was very fair. I didn't</p> <p>14 really need to talk to Christian too much</p> <p>15 because Christian would give me good</p> <p>16 direction. I'll put it to you that way.</p> <p>17 Q. So the answer to my question is</p> <p>18 no, you did not talk to him about drive time</p> <p>19 pay?</p> <p>20 A. I'm sure I did at some point if I</p> <p>21 needed to. But not to my knowledge that I can</p> <p>22 remember.</p> <p>23 Q. Did you ever talk to Betty Beatie</p> <p>24 about drive time pay?</p> <p>25 A. Had very little contact with Betty</p>	<p style="text-align: right;">Page 105</p> <p>1 K. JOHNSTON</p> <p>2 I know I stopped asking questions.</p> <p>3 Q. Crossmark did not control the</p> <p>4 activities that you engaged in during your</p> <p>5 commute, did it?</p> <p>6 A. I'm sorry. Run that past me one</p> <p>7 more time.</p> <p>8 Q. Did Crossmark control the</p> <p>9 activities that you engaged in during the</p> <p>10 commute?</p> <p>11 A. Before or after the scanner or</p> <p>12 both?</p> <p>13 Q. You've gotten into your car,</p> <p>14 you're now driving to your first work</p> <p>15 location.</p> <p>16 A. Right.</p> <p>17 Q. Crossmark doesn't control what you</p> <p>18 do in the car while you drive to that first</p> <p>19 work location, does it? Or did it?</p> <p>20 A. No. I would say no. Other than</p> <p>21 the fact that they know what time you get</p> <p>22 where you're going.</p> <p>23 Q. You were not required by Crossmark</p> <p>24 to participate in conference calls during your</p> <p>25 commute, were you?</p>

27 (Pages 102 to 105)

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1 K. JOHNSTON

2 A. Well, you're not supposed to be on
3 the phone at all in the company car when
4 you're driving. But, yes, they did delay us
5 sometimes from commuting because there would
6 be a conference call at 8:00 or 9:00.

7 Q. Maybe my question wasn't entirely
8 clear and I can certainly understand that
9 that's possible.

10 Did you participate in conference
11 calls while driving?

12 A. No. I pulled aside.

13 Q. Did you -- were you required by
14 Crossmark -- well, let me start that over
15 again.

16 With respect to this idea of
17 pulling over. If you participated in a
18 conference call during the commute but while
19 you pulled over on the side of the road, you
20 recorded that as administrative time, didn't
21 you?

22 A. Oh, I see what you're saying.
23 Yes. Yes.

24 Q. All right. So let me go back to
25 the commuting exercise. You weren't required

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1 K. JOHNSTON

2 by Crossmark to complete any paperwork while
3 you were commuting from your home to your
4 first work location, were you?

5 A. Other than pulling over and doing
6 the meeting -- because there was paperwork
7 required with that. You'd have to pull over
8 and say, well, did you bring this document.

9 Q. Okay.

10 A. I mean, obviously you can't look
11 at paperwork while you're driving.

12 Q. Right. That's part of my point.
13 Right.

14 Right. So did you ever complete
15 paperwork while you were driving?

16 A. No.

17 Q. If you pulled over to participate
18 in a conference call and completed paperwork
19 during that conference call you recorded that
20 time as administrative time, didn't you?

21 A. Actually that wasn't
22 administrative time. That was put on
23 something else because -- that training. That
24 was put under training.

25 Q. So it was recorded into SalesTrak

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1 K. JOHNSTON

2 then.

3 A. Yes. And they told you how much
4 time to put in and a lot of times we would be
5 shorted time there because, say, your
6 conference call was at 8:00. You might want
7 to call in five of eight to make sure you have
8 the right number. They would always kind of
9 gyp you a couple of minutes. I don't like to
10 use the word gyp. But they would tell you --
11 they would short you a couple of minutes on
12 conference calls also.

13 Q. Now, that's different from this
14 idea of drive time, right?

15 A. That's different from drive time.
16 Like I said, that went under training.

17 Q. You weren't required while driving
18 to synch your hand-held device, correct?

19 A. Well, you couldn't anyway. You
20 needed a computer.

21 Q. So you weren't required to synch
22 the hand-held device while driving, were you?

23 A. No.

24 Q. Were you required to perform any
25 duties while you were actually driving?

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1 K. JOHNSTON

2 A. No.

3 Q. And is that true for the end of
4 the workday as well? And we can break it down
5 if we need to. That is, were you required to
6 synch your hand-held device when you were
7 commuting from your last work location to
8 home?

9 A. No. You cannot synch it in the
10 car.

11 Q. Were you required to complete
12 paperwork when you were driving from the last
13 work location to your home?

14 A. No.

15 Q. Were you required to participate
16 in conference calls while you were driving
17 between your last work location and home?

18 A. No.

19 Q. Did Crossmark ever require you to
20 pick up supplies during your drive to your
21 first work location?

22 A. There was times when I did but it
23 was -- they didn't require specifically that
24 you do it in the beginning of the day if
25 that's what you mean.

28 (Pages 106 to 109)

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K. JOHNSTON

Q. Yes, ma'am. That period between leaving home and arriving at your first work location.

A. No. I'd have to say no to that.

Q. Did Crossmark ever require you to pick up supplies during your drive from your last work location to home?

A. No.

Q. Did Crossmark ever require you to stop by other customer locations on your way to your first work location?

A. Customer -- what do you mean by customer?

Q. That's kind of a hard -- I get it it's sort of a hard question to understand. I'm not sure if I understand it. But let me try it again.

Were you required to stop and visit customers or other stores that might be in your territory while you were driving from your home to your first work location when those other stores weren't really your first work location?

A. No.

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K. JOHNSTON

Q. Other than that one day, did you ever give any rides to any Dannon or Crossmark employees during the commute from your home to your first work location?

A. Never.

Q. What about from the last work location to your home during that commute?

A. No.

Q. Have you talked to any Crossmark retail representatives who were not on the Dannon dedicated team about the amount of time that they had to spend commuting from their home to their first work location?

A. No.

Q. Have you talked to any nonDannon dedicated retail representatives of Crossmark about the amount of time that they spent commuting from their last work location to their home?

A. No.

Q. Has anybody -- have any retail reps from Crossmark ever told you that they do not wish to join your collective action against Dannon and Crossmark because they're

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Q. Same thing at the end of the day; were you ever required to stop by customer locations or any other stores when you were leaving or driving from the last work location to home?

A. Sometimes they would give us special stores to check. And not much notice to do it. And you might do it some -- I guess I'm going to have to say maybe to that. Can I say maybe?

Q. Yes, ma'am.

A. Okay. Maybe.

Q. Okay. Did Crossmark ever require you to give rides to other employees during your commute?

A. Yes.

Q. At the beginning of the workday or at the end of the work day?

A. Yes. I had to drive the vice president of Dannon and the DM. Dan. I had to pick them up at their hotel and drive them around one day.

Q. One day?

A. Yes.

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worried about their job?

A. No.

Q. Have any retail representatives from Crossmark or Dannon, for that matter, ever told you that they feel that they will be subject to retaliation by Crossmark if they decide to participate in this lawsuit?

A. No.

Q. Where were you born, Ms. Johnston?

A. New Jersey.

Q. Where?

A. Perth Amboy.

Q. Did you grow up in New Jersey?

A. Yes.

Q. Did you graduate from high school in New Jersey?

A. Yes.

Q. Did you attend college?

A. One year.

Q. What high school did you graduate from?

A. Metuchen High.

Q. I won't do the math but could you tell me what year you graduated?

29 (Pages 110 to 113)

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1 K. JOHNSTON
 2 team throughout the rest of the country --
 3 what kind of schedule they followed?
 4 A. I don't even know if they had to
 5 have a schedule. I think Dannon requested the
 6 schedule. I don't think it was a Crossmark
 7 thing.
 8 MR. FOX: I'm finished with my
 9 follow-up questions. Thank you.
 10 EXAMINATION BY
 11 MR. BOZEMAN:
 12 Q. Just one other. During the course
 13 of your testimony you made several references
 14 to Crossmark and Mapquest.
 15 A. Yes.
 16 Q. Can you tell me what that meant?
 17 I mean, how does Mapquest come into play in
 18 terms of travel time?
 19 A. Well, Mapquest comes into play
 20 because when they assigned you your route,
 21 too, the territory, they want to make sure
 22 you're not traveling three hours to a store.
 23 So they rely on Mapquest to help you map out
 24 where you're going to go and how much time
 25 it's going to take. Because it's -- Mapquest

1
 2 C E R T I F I C A T E
 3 S T A T E O F N E W Y O R K)
 4 : ss.
 5 C O U N T Y O F N E W Y O R K)
 6 I, FRANCIS X. FREDERICK, a Notary
 7 Public within and for the State of New
 8 York, do hereby certify:
 9 That KATHLEEN JOHNSTON, the
 10 witness whose deposition is hereinbefore
 11 set forth, was duly sworn by me and that
 12 such deposition is a true record of the
 13 testimony given by the witness.
 14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage, and that I
 17 am in no way interested in the outcome
 18 of this matter.
 19 IN WITNESS WHEREOF, I have
 20 hereunto set my hand this 1st day of
 21 December, 2008.

FRANCIS X. FREDERICK

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1 K. JOHNSTON
 2 gives you the time in minutes also how long it
 3 should take you. Not taking into
 4 consideration traffic and that kind of stuff.
 5 MR. BOZEMAN: Okay. No other
 6 questions.
 7 MR. FOX: Thank you, Ms. Johnston.
 8 THE WITNESS: Okay. Thank you.
 9 Sorry. Hope I didn't make you guys too
 10 nuts.
 11 MR. POWELL: Don't go beyond the
 12 thank you.
 13 (Time Noted: 11:45 a.m.)

KATHLEEN JOHNSTON

22 Subscribed and sworn to before me
 23 this ____ day of _____, 2008.

1
 2 ----- I N D E X -----
 3 WITNESS EXAMINATION BY PAGE
 4 KATHLEEN JOHNSTON MR. FOX 5, 126
 5 MR. BOZEMAN 119, 142
 6
 7
 8
 9

----- INFORMATION REQUESTS -----

11 DIRECTIONS: NONE
 12 RULINGS: NONE
 13 TO BE FURNISHED: NONE
 14 REQUESTS: NONE
 15 MOTIONS: 42, 124, 126, 127
 16
 17
 18
 19

20 ----- EXHIBITS -----
 21 DEFENDANT'S FOR ID.
 22 Exhibit 1
 23 Plaintiffs' Notice of Motion and
 24 Motion For Conditional Certification
 25 and Notice to the Proposed Class..... 29

37 (Pages 142 to 145)

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1
2 ----- EXHIBITS -----
3 DEFENDANT'S FOR ID.
4 Exhibit 2
5 document entitled SalesTrak
6 Web View Payroll Solution
7 Training Dedicated Teams..... 72
8 Exhibit 3
9 e-mail dated May 29, 2008
10 bearing production numbers
11 CMK 000325 through CMK 000326..... 77
12 Exhibit 4
13 document entitled Crossmark
14 Full-time Associate Policy Manual
15 May 2004..... 97
16 Exhibit 5
17 Employment Acknowledgement bearing
18 production number CMK 000397..... 97
19 Exhibit 6
20 Drive Time and Business Mileage
21 Reimbursement Policy bearing
22 production numbers
23 CMK 000317 through CMK 000320..... 97
24
25

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1
2 NAME OF CASE: JOHNSTON v. DANNON
3 DATE OF DEPOSITION: NOVEMBER 24, 2008
4 NAME OF WITNESS: KATHLEEN JOHNSTON
5 Reason codes:
6 1. To clarify the record.
7 2. To conform to the facts.
8 3. To correct transcription errors.
9 Page _____ Line _____ Reason _____
10 From _____ to _____
11 Page _____ Line _____ Reason _____
12 From _____ to _____
13 Page _____ Line _____ Reason _____
14 From _____ to _____
15 Page _____ Line _____ Reason _____
16 From _____ to _____
17 Page _____ Line _____ Reason _____
18 From _____ to _____
19 Page _____ Line _____ Reason _____
20 From _____ to _____
21 Page _____ Line _____ Reason _____
22 From _____ to _____
23
24
25 KATHLEEN JOHNSTON

38 (Pages 146 to 147)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

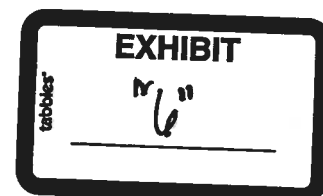
KATHLEEN JOHNSTON, LORETTA)	
WEIGNER and JANICE FAHRENHOLTZ,)	
on behalf of themselves and)	
all others similarly situated,)	
)	
d)	Plaintiffs,
)	
vs.)	No. 08-1525
)	(SDW)
CROSSMARK, INC., and the)	
DANNON COMPANY,)	
)	
)	Defendants.
-----)	

DEPOSITION OF LORETTA WEIGNER

Princeton, New Jersey

Monday, November 24, 2008

Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 19835



<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 November 24, 2008 6 12:11 p.m. 7 8 9 Deposition of LORETTA WEIGNER, 10 held at the offices of Mason Griffin, 101 11 Poor Farm Road, Princeton, New Jersey, 12 pursuant to Notice, before Francis X. 13 Frederick, a Certified Shorthand 14 Reporter, Registered Merit Reporter and 15 Notary Public of the States of New York 16 and New Jersey. 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 L. WEIGNER 2 LORETTA WEIGNER, called as 3 a witness, having been duly sworn by a 4 Notary Public, was examined and 5 testified as follows: 6 EXAMINATION BY 7 MR. FOX: 8 Q. Would you please state your full 9 name? 10 A. Loretta D. Weigner. 11 Q. Ms. Weigner, my name is Steve Fox. 12 I'm an attorney who represents Crossmark, Inc. 13 and the Dannon Corporation in a lawsuit that 14 you filed against them. 15 We're here today to ask some 16 questions about some information that's been 17 submitted to the court. Do you understand 18 that we are here to ask those questions of 19 you? 20 A. Yes. 21 Q. Have you ever been deposed before? 22 A. Never. 23 Q. Let's go through some ground rules 24 so that things will go smoothly between us. 25 A. Okay.</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 POWELL BOZEMAN 5 Attorneys for Plaintiffs 6 1900 Knight Circle 7 Yardley, Pennsylvania 19067 8 BY: WAYNE D. BOZEMAN, ESQ. 9 DR. RALPH A. POWELL, ESQ. 10 11 FISH & RICHARDSON, P.C. 12 Attorneys for Defendants 13 1717 Main Street, Suite 5000 14 Dallas, Texas 75201 15 BY: STEPHEN E. FOX, ESQ. 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 L. WEIGNER 2 Q. First of all, do you understand 3 that you're under oath? 4 A. I do. 5 Q. Do you understand that you've been 6 sworn to tell the truth? 7 A. Yes. 8 Q. Do you understand that there are 9 penalties for perjury if it's learned at some 10 later point that your testimony was not 11 truthful? 12 A. Yes. 13 Q. Do you understand that your 14 testimony today in this conference room has 15 the same force and effect as if you were 16 testifying in the federal courthouse in 17 Trenton? 18 A. Yes. 19 Q. If you'll continue to do what 20 you've done thus far things will go smoothly. 21 And that is allow me to finish asking my 22 question before you begin to pose your answer. 23 And then, likewise, I'll try to allow you to 24 finish answering before I ask another 25 question. Is that acceptable?</p>

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2 record for a minute?

3 MR. FOX: Yes.

4 (Discussion held off the record.)

5 BY MR. FOX:

6 Q. The allegation about the technical
7 errors that occurred in the use of an
8 electronic scanning device, those relate to
9 the alleged failure by Crossmark to pay you
10 and other employees for administrative time.

11 A. Correct.

12 Q. Let's talk about this alleged
13 underpayment of wages because of the computer
14 time keeping issue.

15 From January 2006 until the
16 current day, you have used a system called
17 SalesTrak to report the time that you worked
18 for Crossmark, correct?

19 A. Um-hum, yes.

20 Q. You reported that time in the
21 number of minutes worked, correct?

22 A. Exactly.

23 Q. With respect to recording that
24 time did you personally record the time that
25 you worked or did you have other people record

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2 Q. What understanding do you have of
3 how the Lawson system works?

4 A. My understanding is -- and this is
5 only hearsay -- I did, in fact, call down to
6 HR and send an e-mail about the five minutes
7 shortage. And I'm trying to remember her
8 name. She was part of the payroll department.
9 She said they're using Lawson. It's a new
10 system we're using. And it goes up and down.

11 I said to her, Well, it never goes
12 up. It always goes down. She said we're
13 going to fix that.

14 Q. Okay. So that was kind of your
15 introduction to the Lawson system?

16 A. Um-hum. Yes.

17 Q. Do you understand that the Lawson
18 system takes the minutes that you record in
19 SalesTrak and converts them to hours worked?

20 A. I do.

21 Q. You've mentioned this idea of five
22 minutes. Can you describe for me the computer
23 error that you claimed that was occurring that
24 resulted in the pay shortages that you allege
25 occurred?

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2 it for you?

3 A. Oh, never have anyone recorded but
4 yourself.

5 Q. So the answer is I was the only
6 one who recorded my time.

7 A. Exactly, yes.

8 Q. Did you understand when you worked
9 at Crossmark that it was your responsibility
10 to accurately record the time that you worked?

11 A. Well, quite frankly that only
12 happened three years ago. Previous to that we
13 were salaried employees. We had none of this
14 silliness.

15 Q. Okay. Let me move to strike that
16 answer as nonresponsive.

17 Did you understand when you worked
18 for Crossmark that it was your responsibility
19 to accurately record the time that you worked?

20 A. Yes.

21 Q. Now, during the same time period,
22 January 2006 to the present, Crossmark was
23 using a software program called Lawson to pay
24 its retail representatives, correct?

25 A. I think so.

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2 A. I would put in my 2,400 minutes.
3 I would go in every Saturday morning and check
4 my e-mails to see what was there. The
5 following week when payroll came over we use a
6 system called My Info to go in and look at
7 your pay stub and what you're being paid for.
8 I was being paid 39.95. I personally did not
9 pick this up myself. Another employee told me
10 to take a look at it which is when we started
11 looking at it.

12 Q. Who told you to take a look at it?

13 A. Cathy Lombardi.

14 Q. Is Cathy still employed by
15 Crossmark?

16 A. She is.

17 Q. Now, do you contend that this
18 computer time keeping issue always benefited
19 Crossmark?

20 A. Absolutely.

21 Q. Have you ever reviewed or compared
22 your own SalesTrak report and your Lawson
23 payroll record or the payroll stub to
24 determine whether the rounding error ever
25 benefited you?

10 (Pages 34 to 37)

<p style="text-align: right;">Page 42</p> <p>1 L. WEIGNER</p> <p>2 duties that are performed on a daily basis by</p> <p>3 retail representatives who are not on the</p> <p>4 Dannon dedicated team?</p> <p>5 A. I would say I know. We see each</p> <p>6 other in the stores and we see each other in A</p> <p>7 Trains and we talk. I see what they're doing</p> <p>8 and they see what I'm doing.</p> <p>9 Q. Do they do the exact same job</p> <p>10 duties as you?</p> <p>11 A. No.</p> <p>12 Q. Their duties are somewhat</p> <p>13 different?</p> <p>14 A. Yes.</p> <p>15 Q. How are they different?</p> <p>16 A. Well, they have different projects</p> <p>17 than we have. They do a Walmart thing where</p> <p>18 they fill shelves and build different shelves</p> <p>19 and displays. They do a Milstone product</p> <p>20 where they fill coffee things. Sometimes they</p> <p>21 do total resets. Sometimes they do exactly</p> <p>22 what we do. Sometimes they write credits.</p> <p>23 Q. While you see in some of your</p> <p>24 stores and talk at A Train meetings to</p> <p>25 employees in the Pennsylvania geographic area</p>	<p style="text-align: right;">Page 44</p> <p>1 L. WEIGNER</p> <p>2 on a Dannon dedicated team but you don't know</p> <p>3 to what extent they use that.</p> <p>4 A. No. A Profetti team I've met in</p> <p>5 the store. They also have a hand-held like</p> <p>6 mine. Land-o-Lakes used what they called an</p> <p>7 IPAC which is a different device than ours.</p> <p>8 But still a hand-held device.</p> <p>9 Q. What about outside of Land-o-Lakes</p> <p>10 and the people that you've seen in some</p> <p>11 stores. I think you said it was the Peretti?</p> <p>12 A. Profetti.</p> <p>13 Q. Profetti?</p> <p>14 A. Um-hum.</p> <p>15 Q. Other than people in the Profetti</p> <p>16 or Land-o-Lakes team, do you have any idea</p> <p>17 whether other retail representatives of</p> <p>18 Crossmark use hand-held devices?</p> <p>19 A. No.</p> <p>20 Q. Now, you've alleged in the -- in</p> <p>21 an affidavit that you submitted in support of</p> <p>22 this motion for conditional certification that</p> <p>23 the computer time keeping issues were fixed in</p> <p>24 September 2008.</p> <p>25 A. Is that two months ago?</p>
<p style="text-align: right;">Page 43</p> <p>1 L. WEIGNER</p> <p>2 which might include New Jersey and Delaware</p> <p>3 and Maryland, do you have any understanding of</p> <p>4 what retail representatives at Crossmark do</p> <p>5 outside of that area?</p> <p>6 A. No.</p> <p>7 Q. To what extent do you know what</p> <p>8 hours are worked on a daily basis by retail</p> <p>9 representatives who are not on the Dannon</p> <p>10 dedicated team?</p> <p>11 A. I don't have anything factual.</p> <p>12 Q. I understand that you use a</p> <p>13 hand-held device in connection with performing</p> <p>14 your duties with the Dannon dedicated team and</p> <p>15 that you've been using it since approximately</p> <p>16 December 2007, correct?</p> <p>17 A. Correct.</p> <p>18 Q. To what extent do retail</p> <p>19 representatives who are not on the Dannon</p> <p>20 dedicated team use hand-held devices?</p> <p>21 A. Quite frankly, I don't know. They</p> <p>22 have a little device. I see it. I certainly</p> <p>23 have never used it.</p> <p>24 Q. So sometimes you've seen some</p> <p>25 people with a hand-held device who don't work</p>	<p style="text-align: right;">Page 45</p> <p>1 L. WEIGNER</p> <p>2 Q. Yes, ma'am. It would be.</p> <p>3 To what extent do you understand</p> <p>4 or how is it that you understand that these</p> <p>5 alleged computer time keeping issues were</p> <p>6 resolved or fixed in September 2008?</p> <p>7 A. Al Gallion was the one that told</p> <p>8 me. I looked and I thought, wow, I'm getting</p> <p>9 paid for exactly what I put in. But the fact</p> <p>10 that I'm on light duty mine could be</p> <p>11 different.</p> <p>12 So I check my every week to make</p> <p>13 sure I'm getting paid correctly. Al Gallion</p> <p>14 called me and told me -- and this is</p> <p>15 hearsay -- he spoke with payroll and they told</p> <p>16 him it was fixed. Cathy Lombardi also told me</p> <p>17 that hers was 2,400 minutes for the last</p> <p>18 couple weeks.</p> <p>19 Q. All right. Let's discuss your</p> <p>20 allegations concerning unpaid administrative</p> <p>21 time.</p> <p>22 Can you describe for me what</p> <p>23 administrative tasks you perform at the</p> <p>24 beginning of each workday?</p> <p>25 A. Pretty much you have to</p>

12 (Pages 42 to 45)

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synchronize your computer, the hand-held. You have to read your e-mails. Check your voice mails. Depending on what is on e-mail sometimes you need to print things out and put them in your pitch book. Load them up in your car and off you come.

Q. What administrative tasks if any do you perform at the end of your workday?

A. There's more involved at the end. You have to come home, you have to double-check what you've put in your hand-held to make sure it's correct. Or at least I do. Any pictures we've had to take during the day -- which is an extremely big thing with Dannon. You must take pictures, digital pictures. Take the digital pictures. They must be downloaded. Previous we used to send them over. We now have a form. So we have to compress it. It's very timely to do that. Compress the pictures. Fill in the information. They have to be forwarded on to Dannon and to Crossmark. Check voice mail again. Check e-mail. See if anything is new. Periodically there'll be, you know, a recall

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of one of the products. Or there will be a new distribution sheet that needs to be printed out again. And then you synchronize your computer. And when it does not synchronize, which some days it does. Other days you might do it five, six, seven times. If you can't get it done within then you have to call what's called the Help Desk down in Texas. And they're not in Texas anymore. They're in -- I don't know -- San somewhere. And hopefully they'll be able to fix it for you.

Q. In connection with calling the help desk for assistance on the synching process, did you do that in the morning or in the evening?

A. Depends on when you need the help.

Q. Okay. So it could have happened on either end of the day?

A. Correct.

Q. How much time did you take to perform the administrative tasks that you listed in the morning? And just for your recollection you said you synched the

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hand-held, read e-mail, checked voice mail, and printed out documents from time to time. On average how much time did it take you to do those?

A. That would depend on how well the synch went through. Sometimes 25, 30 minutes. It would go right through, boom, you're okay. Other days you have to resynch and resynch.

Q. And so you're saying it would take longer?

A. Absolutely. Because every time you do it you have to, you know, plug back in.

Q. And how long would it take you to perform the administrative tasks that you listed at the end of the day?

A. I spend approximately -- and this is not every day so don't take that -- approximately an hour, an hour and 15 minutes until recently now we have a new project.

Q. So tell me what takes -- what goes into this hour to hour and 15 minutes? You're saying on average that's what you take.

A. Yes. Well, on average, yes. Pretty much I come home, check my voice mail.

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Q. How long does that take?

A. Oh, just a few minutes. Depending on what's said and what needs to be done. Then I check my e-mail. Usually there's something that needs to be fixed.

And I will just give you a hypothetical explanation. We're doing a project right now called mapping. I received an e-mail this morning but I'm off today so I'll do it tomorrow morning. Some of the in -- the information that I input myself and many other people, the e-mail was directed to half the team. These have to go in and be fixed. How long this is going to take I'd say 25, 30 minutes.

Q. So on average it takes you 25 to 30 minutes to respond to e-mail?

A. No.

Q. No? On average how long does it take to respond to e-mail, to look at and respond to e-mail at the end of the day?

A. It depends on what's on there what has to be done. Some you just read. Some you need to address.

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<p style="text-align: right;">Page 50</p> <p>1 L. WEIGNER</p> <p>2 Q. So some days it would take a few</p> <p>3 minutes. Some days it would take longer than</p> <p>4 a few minutes?</p> <p>5 A. Exactly.</p> <p>6 Q. Is there any rhyme or reason to</p> <p>7 it?</p> <p>8 A. None.</p> <p>9 Q. Then in downloading the digital</p> <p>10 pictures and forwarding them, how long does</p> <p>11 that take?</p> <p>12 A. That takes a long time. I would</p> <p>13 say approximately 45 minutes.</p> <p>14 Q. Where you sit in front of a</p> <p>15 computer and allow for the downloading to take</p> <p>16 place? Or do you just -- you try to send --</p> <p>17 first of all, you have to compress the data</p> <p>18 and then you send the data.</p> <p>19 A. Exactly.</p> <p>20 Q. You're not sitting in front of the</p> <p>21 computer while it's being compressed, are you?</p> <p>22 A. Of course I am. To see if it's</p> <p>23 going through properly.</p> <p>24 Q. To compress the data you sit in</p> <p>25 front of the computer and watch it.</p>	<p style="text-align: right;">Page 52</p> <p>1 L. WEIGNER</p> <p>2 the information that you've input into the</p> <p>3 hand-held?</p> <p>4 A. It takes me about ten minutes.</p> <p>5 Q. And then how long does the synch</p> <p>6 process take?</p> <p>7 A. Depending on if it goes through or</p> <p>8 not.</p> <p>9 Q. So before the synch device was --</p> <p>10 or the hand-held device was being used</p> <p>11 beginning in December 2007, and before you had</p> <p>12 to download digital pictures, it sounds like</p> <p>13 it took you roughly 15 minutes or so to do</p> <p>14 your administrative tasks at the end of the</p> <p>15 day; is that fair?</p> <p>16 A. Not quite. I would say 20, 25.</p> <p>17 The reason being we get a lot of voice mails,</p> <p>18 a lot of e-mails at the end of the day. And</p> <p>19 previous to downloading pictures we had to</p> <p>20 take pictures with a regular camera. And of</p> <p>21 course you have to take it somewhere, get them</p> <p>22 developed, bring them back, glue them on a</p> <p>23 form, and send them off.</p> <p>24 Q. What is Crossmark's policy with</p> <p>25 respect to recording administrative time spent</p>
<p style="text-align: right;">Page 51</p> <p>1 L. WEIGNER</p> <p>2 A. It's a picture you compress to a</p> <p>3 smaller form.</p> <p>4 Q. Right. I understand how to do it.</p> <p>5 A. Okay.</p> <p>6 Q. Yeah. So you sit in front of the</p> <p>7 computer while the compression is taking</p> <p>8 place.</p> <p>9 A. I do.</p> <p>10 Q. All right. Other than -- when</p> <p>11 you're doing that are you doing other things?</p> <p>12 A. No.</p> <p>13 Q. You're sitting in front of the</p> <p>14 computer watching the data be compressed.</p> <p>15 A. I am.</p> <p>16 Q. Okay. And then how long does it</p> <p>17 take you to forward it once it's been</p> <p>18 compressed?</p> <p>19 A. Once it's been compressed a couple</p> <p>20 of minutes.</p> <p>21 Q. How long have you been downloading</p> <p>22 digital pictures and sending them?</p> <p>23 A. Only about -- maybe a little over</p> <p>24 a year.</p> <p>25 Q. How long does it take you to check</p>	<p style="text-align: right;">Page 53</p> <p>1 L. WEIGNER</p> <p>2 by you, a retail representative, in SalesTrak?</p> <p>3 A. What am I allowed to put in?</p> <p>4 Q. What's Crossmark's policy?</p> <p>5 A. Thirty minutes a day.</p> <p>6 Q. And how do you understand that to</p> <p>7 be the policy?</p> <p>8 A. I was verbally told by Betty</p> <p>9 Beatie. I was verbally told by Christian. I</p> <p>10 was verbally told by Izabela.</p> <p>11 Q. So let's break that down. Tell me</p> <p>12 exactly what Betty Beatie told you about</p> <p>13 recording administrative time.</p> <p>14 A. Betty Beatie said on a conference</p> <p>15 call 30 minutes for admin time.</p> <p>16 Q. She said that was the goal?</p> <p>17 A. No. That's the time allotted.</p> <p>18 Q. Did she tell you that you couldn't</p> <p>19 record administrative time beyond 30 minutes?</p> <p>20 A. They would prefer that we did not.</p> <p>21 Q. With respect to your conversation</p> <p>22 with Mr. Garcia did he tell you -- or tell me</p> <p>23 what he told you about recording</p> <p>24 administrative time.</p> <p>25 A. Christian always told us you get</p>

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2 30 minutes a day. No more, no less. Because
3 it cuts into your work in the field.4 Q. Did he ever tell you that you
5 could not record more than 30 minutes for
6 administrative time during the work day?

7 A. No, he never did.

8 Q. What did Izabela tell you about
9 recording administrative time?10 A. Izabela said our policy is 30
11 minutes.12 Q. Did she ever tell you that you
13 could not record more than 30 minutes
14 administrative time on any particular workday?15 A. What Izabela said, and this would
16 be a conference call or a Friday morning call,
17 if you need the 45 minutes and you're not
18 going over the 2,400 minutes it's okay.19 Q. So let me see if I can sort of
20 again take that and then ask this question
21 with it. Did she ever tell you that you were
22 not permitted by policy to record more than 30
23 minutes for administrative time on any given
24 workday?

25 A. No.

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2 Q. Mr. Garcia, Ms. Beatie, and
3 Izabela all work on the Dannon dedicated team,
4 correct?

5 A. Correct.

6 Q. What basis do you have for
7 believing that retail representatives who were
8 not employed on the Dannon dedicated team were
9 told to record only 30 minutes of
10 administrative time during any given workday?11 A. I have no idea. I've never made
12 that statement.13 Q. Today are you recording more than
14 30 minutes administrative time?

15 A. Today?

16 Q. Yes, ma'am.

17 A. I'm recording none today. I'm off
18 today.19 Q. Okay. That was literally what I
20 asked you. So let me change it.21 At the current time when recording
22 time in SalesTrak, are you recording more than
23 30 minutes a day for administrative time?24 A. Yes. We are right now because
25 we're doing a new project.

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2 Q. When did you begin recording more
3 than 30 minutes administrative time in
4 SalesTrak?

5 A. The project started two weeks ago.

6 Q. Are you -- do you -- have you
7 since -- let me start over again. Between
8 January 2006 and the present time, have you
9 ever accurately recorded all of the
10 administrative time that you spent working?

11 A. No.

12 Q. And why not?

13 A. Because I have to be very careful
14 with my minutes. See, we're using a hand-held
15 out in the field. And I don't know how
16 familiar you are with them. You'll do one --
17 the hand-held has several projects in it and
18 you said you have seen them. There will be
19 one project and it will say PC distribution.
20 You have 30 minutes to do that. So you do
21 that. Then you're doing a Frusion neck
22 hanger. When you're doing that you're hanging
23 things on the bottles.

24 Sounds like a fun job, huh?

25 And depending on how much time

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2 that takes, you also put that time in. I'm
3 trying to think of -- well, and a lot of time
4 we have what we call no-scan items. Items
5 that have not scanned through the grocery
6 stores. Maybe one of the new yogurts, maybe a
7 blueberry fruit on the bottom. So we have to
8 check that. We get additional -- we put
9 minutes in for that. If it takes me five
10 minutes to find it, ten minutes, I put that in
11 the hand-held.12 Close out that store, go onto the
13 next one. It's very hard to keep in your head
14 how many minutes you've put in a day at the
15 end of the day until you've synchronized.16 Q. And this difficulty is because you
17 can't remember it?

18 A. Yeah. Me and everybody else.

19 Q. Okay. Do you understand that it's
20 Crossmark's policy that all time spent by a
21 retail representative performing
22 administrative tasks should be recorded?

23 A. I do.

24 Q. How do you know that to be the
25 case?

15 (Pages 54 to 57)

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 2 A. I'm not sure if I saw it in the
 3 company handbook or I heard it in a conference
 4 call but I have heard that.
 5 Q. Okay. So if that's the company's
 6 policy have you followed that policy?
 7 A. I put my admin time in as I can.
 8 I put my 30 minutes a day in. But in order to
 9 get my job done I need to do more. And I
 10 don't charge them for it.
 11 Q. Is that your fault or the
 12 company's fault?
 13 A. Well, if they gave us less to do
 14 then I wouldn't have to do that, would I?
 15 Q. If you understand -- or to the --
 16 start over again.
 17 The company's policy is that
 18 retail representatives are to accurately
 19 record all time spent on administrative tasks,
 20 right?
 21 A. Correct.
 22 Q. So if the retail representative
 23 doesn't accurately record the amount of time
 24 that they spend on administrative tasks whose
 25 fault is that? The company's fault or the

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 2 retail representative's fault?
 3 A. It would be our fault. But if we
 4 put all the admin time in at the end of the
 5 week if we have 2,600 minutes we're
 6 reprimanded and somebody will write us up.
 7 Q. Have you ever been reprimanded for
 8 putting --
 9 A. I've never done it.
 10 Q. Well, have you ever heard of
 11 anybody else being reprimanded?
 12 A. I have.
 13 Q. Who?
 14 A. Izabela reprimanded a girl down in
 15 Maryland because she put in for overtime. But
 16 we're not allowed to have overtime.
 17 Q. Well, putting in for overtime is
 18 different than recording accurately recording
 19 administrative time.
 20 A. It is not.
 21 Q. Okay. I believe it to be
 22 different. I guess you can share your own
 23 view.
 24 Here's the question. If you're
 25 told by policy to accurately record all

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 2 administrative time spent by you, the retail
 3 representative, on administrative tasks, then
 4 how can the company reprimand you for doing
 5 what they've told you to do?
 6 A. Because that policy's only been in
 7 effect for about four months.
 8 Q. How do you know it's only been in
 9 effect for four months?
 10 A. Because we were told previous 30
 11 minutes a day.
 12 Q. And again that was Mr. Garcia?
 13 A. Yes, it was.
 14 Q. Allegedly Mr. Garcia. Allegedly
 15 Izabela. And allegedly Ms. Beatie.
 16 A. Yes. We have a new supervisor and
 17 this has been her policy, accurately put in
 18 all your admin time.
 19 Q. Let's go back to this idea that
 20 somebody was reprimanded. This person that
 21 was allegedly reprimanded by Izabela was it
 22 because the person put in all of their
 23 administration time?
 24 A. I don't really know.
 25 Q. Okay.

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 2 A. What I do know is they got
 3 reprimanded because they had over 2,400
 4 minutes.
 5 Q. So you don't understand -- it
 6 could be the case that the person put in for
 7 overtime when they hadn't asked for approval
 8 of that overtime before putting it in,
 9 correct?
 10 A. No. You need to ask for approval
 11 before you can put in for any overtime.
 12 Q. Do you know whether or not this
 13 person --
 14 A. No, I do not.
 15 Q. And that's my point. You don't
 16 know whether this person sought that approval
 17 before putting it in, do you?
 18 A. No, I do not.
 19 Q. So it could be the case that she
 20 put -- she recorded overtime hours but had not
 21 sought and obtained approval to do that,
 22 correct?
 23 A. That could very well be.
 24 Q. Under those circumstances would
 25 you agree that would be appropriate to

16 (Pages 58 to 61)

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1 L. WEIGNER
 2 AFTERNOON SESSION
 3 (Time noted: 1:37 p.m.)
 4 LORETTA WEIGNER, resumed and
 5 testified as follows:
 6 EXAMINATION BY (Cont'd.)
 7 MR. FOX:
 8 Q. Let's move on to the allegations
 9 about drive time. You claim that Crossmark
 10 failed to compensate you for the time spent
 11 driving from your home to your first work
 12 location of the day, correct?
 13 A. Crossmark's policy is the first
 14 hour is on you, the last hour is on you.
 15 Q. Okay. Do you believe that you
 16 should be paid for that hour drive time
 17 between --
 18 A. Absolutely.
 19 Q. Let me finish asking my questions
 20 before you answer them.
 21 On average how long does it take
 22 you to drive from your home to your first work
 23 location at the beginning of the day?
 24 A. Depends on where I need to go. If
 25 I have to go to Reading it's over an hour. If

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1 L. WEIGNER
 2 I go to upper Montgomery County -- if I work
 3 locally it might be 20 minutes.
 4 Q. Is there a particular day that you
 5 know that you're going to need to drive over
 6 an hour while other days you're going to drive
 7 less than 20 minutes?
 8 A. Yes.
 9 Q. What day of the week do you go to
 10 the Reading stores?
 11 A. I usually go to Reading on a
 12 Wednesday or a Thursday.
 13 Q. Why is that?
 14 A. It fits into my routine.
 15 Q. What part of your routine is
 16 addressed by having you go Wednesday or
 17 Thursday?
 18 A. It depends when your dairy
 19 managers are in so you're able to speak --
 20 because they all have different days off.
 21 Some work night crew. Some come in -- so I
 22 try to work my schedule that I'm in an area
 23 that I can see the most amount of people in
 24 the shortest amount of time.
 25 Q. So if you're driving to Reading it

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1 L. WEIGNER
 2 may take over an hour. If it's a more of a
 3 local trip it may take 20 minutes or so?
 4 A. Correct.
 5 Q. If it takes you longer than an
 6 hour to drive from your home to your first
 7 work location Crossmark compensates you for
 8 the time spent driving that exceeds an hour,
 9 correct?
 10 A. Yes.
 11 Q. So when you're entering time in
 12 SalesTrak you record any drive time that
 13 exceeds one hour at the beginning of the drive
 14 time, correct?
 15 A. Correct.
 16 Q. And is the same true with respect
 17 to drive time at the end of the day; if it
 18 exceeds one hour do you record the amount of
 19 time that exceeds an hour?
 20 A. I do.
 21 Q. What proof do you have that it
 22 takes all Crossmark retail representatives
 23 that you seek to represent in this lawsuit the
 24 same amount of time to drive from their home
 25 to their first work location at the beginning

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1 L. WEIGNER
 2 of the workday?
 3 A. You finished?
 4 Q. Yes, ma'am.
 5 A. Oh, okay. It was like you were
 6 going to say something else.
 7 I don't have any proof. It's
 8 hearsay but I know where they go in their
 9 territories.
 10 Q. When you say they, you're again
 11 talking about the people on the Dannon
 12 dedicated team?
 13 A. No. The retail team. People that
 14 you know that you bump into and talk to. And
 15 who had to drive an hour, hour and a half.
 16 And it's -- well, not to use any foul language
 17 but they do out in the field about the drive
 18 time.
 19 Q. But their drive time, are you
 20 telling me that it is exactly the same as
 21 yours?
 22 A. No. Absolutely not.
 23 Q. So their drive time would vary
 24 from the drive time that you've testified
 25 about.

19 (Pages 70 to 73)

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Page 76

1 L. WEIGNER

2 A. Certainly. Everybody's drive time
3 varies.

4 Q. Now, do you stay at the same work
5 location throughout the day?

6 A. I stay within the same area.

7 Q. But you visit different stores in
8 that area?

9 A. I do.

10 Q. So you typically travel from one
11 work location to another during your workday?

12 A. One store to another.

13 Q. Yes.

14 A. Yes.

15 Q. And when I say work location, if
16 it's a store for you that's what I'm talking
17 about.

18 A. Okay.

19 Q. You're not claiming, are you, that
20 Crossmark fails to compensate you for time
21 spent driving between the first and second
22 locations, are you?

23 A. No.

24 Q. Or any locations thereafter other
25 than at the end of the day.

1 L. WEIGNER

2 your signature on it you were certifying that
3 you read the company full-time associate
4 policy manual, correct?

5 A. When I signed that I said I would
6 read the manual. They were given out.

7 Q. Okay. It acknowledges at a
8 minimum your receipt of it.

9 A. Yes.

10 Q. Look at page 16 of the handbook.

11 A. Okay.

12 Q. At the bottom of page 16 there's a
13 heading Travel Time Drive Time.

14 A. Um-hum.

15 Q. Do you see that?

16 A. I do.

17 Q. Take a look at that for a minute
18 and then let me ask you if you understood that
19 was the policy of the company while you worked
20 there.

(Document review.)

22 A. I do. To be honest with you, I
23 really don't understand. Pay for the travel
24 time work is included in the associate's
25 project pay which we don't get. Or hourly

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Page 77

1 L. WEIGNER

2 A. And the beginning.

3 Q. So it's your belief that Crossmark
4 pays you for drive time spent between -- or
5 driving between the first work location and
6 the last work location.

7 A. Absolutely.

8 Q. If you look at Exhibit 4. That's
9 the Associate Policy Manual. Do you recall
10 receiving the May 2004 Associate Policy Manual
11 during your employment at Crossmark?

12 A. I do.

13 (Defendant's Exhibit 7, Employment
14 Acknowledgement bearing production number
15 CMK 000398, marked for identification as
16 of this date.)

17 BY MR. FOX:

18 Q. Exhibit 7 is an employment
19 acknowledgment form. Do you see that?

20 A. The one in front of me?

21 Q. Yes, ma'am.

22 A. Um-hum. I do.

23 Q. Is that your signature?

24 A. It is.

25 Q. And on this document in placing

1 L. WEIGNER

2 rate.

3 Q. Which you do get.

4 A. Yes.

5 Q. Okay. If you will, look at
6 Exhibit 6. That's a policy and procedure from
7 Crossmark's managers' manual. It's also
8 maintained on the company's website concerning
9 drive time.

10 Do you see that?

11 A. Um-hum.

12 Q. And this -- I don't need to ask
13 you any questions about it other than to point
14 out that it provides the same information or
15 similar information about drive time.

16 In paragraph 3.1. Do you see
17 that?

18 A. I do.

19 Q. Now, on what basis do you contend,
20 that is, why do you believe that Crossmark
21 should compensate you for the time you spend
22 commuting from your home to your first work
23 location and then time spent commuting from
24 your last work location to your home?

25 A. Because my day starts before I get

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 L. WEIGNER</p> <p>2 into my car and my day finishes after I get</p> <p>3 out of my car.</p> <p>4 Q. When you say it begins you're</p> <p>5 saying that you have to undertake some</p> <p>6 administrative tasks before you drive to your</p> <p>7 first work location?</p> <p>8 A. Correct.</p> <p>9 Q. And when you say that you ought to</p> <p>10 be paid for the drive time at the end of the</p> <p>11 workday it's because there are some additional</p> <p>12 administrative tasks that you perform after</p> <p>13 you arrive home from the last work location?</p> <p>14 A. Correct.</p> <p>15 Q. Now, when you're driving from home</p> <p>16 to your first work location Crossmark doesn't</p> <p>17 require you to complete paperwork in the car,</p> <p>18 does it?</p> <p>19 A. No.</p> <p>20 Q. Crossmark doesn't require you to</p> <p>21 synch your hand-held device during that</p> <p>22 commute, does it?</p> <p>23 A. Well, you couldn't.</p> <p>24 Q. So it doesn't require you to do</p> <p>25 it.</p>	<p style="text-align: right;">Page 80</p> <p>1 L. WEIGNER</p> <p>2 your hand-held device during the commute?</p> <p>3 A. No.</p> <p>4 Q. Does it require you to perform any</p> <p>5 duties during the commute at the end of the</p> <p>6 day?</p> <p>7 A. No.</p> <p>8 Q. Are you required to participate in</p> <p>9 conference calls during the commute at the end</p> <p>10 of the day?</p> <p>11 A. No.</p> <p>12 Q. Did Crossmark or does Crossmark --</p> <p>13 has Crossmark ever required you to pick up</p> <p>14 supplies during your drive to your first work</p> <p>15 location?</p> <p>16 A. Periodically. It's not a normal</p> <p>17 thing. I'll have to stop at the office, grab</p> <p>18 something.</p> <p>19 Q. Like what?</p> <p>20 A. Point of sale. Maybe a rack.</p> <p>21 Maybe a case that I have to put shelves in a</p> <p>22 store.</p> <p>23 Q. How often does that happen?</p> <p>24 A. Depends on what -- well, like if</p> <p>25 we're having a project where we're putting the</p>
<p style="text-align: right;">Page 79</p> <p>1 L. WEIGNER</p> <p>2 A. No.</p> <p>3 Q. You're not required by Crossmark</p> <p>4 to perform any duties during your commute at</p> <p>5 the beginning of the work day, are you?</p> <p>6 A. At the beginning of the workday?</p> <p>7 Before I leave my house.</p> <p>8 Q. Right. And I'm focusing right now</p> <p>9 on the commute time.</p> <p>10 A. Oh, the commute time, okay.</p> <p>11 Q. Crossmark doesn't require you to</p> <p>12 perform any duties during the commute from</p> <p>13 your home to your first work location, does</p> <p>14 it?</p> <p>15 A. No, they do not.</p> <p>16 Q. Are you ever required to</p> <p>17 participate in conference calls during your</p> <p>18 commute?</p> <p>19 A. No.</p> <p>20 Q. With respect to the end of the</p> <p>21 workday and that commute process, does</p> <p>22 Crossmark require you to complete any</p> <p>23 paperwork during the commute, itself?</p> <p>24 A. No.</p> <p>25 Q. Does it require you to you synch</p>	<p style="text-align: right;">Page 81</p> <p>1 L. WEIGNER</p> <p>2 shelves in I have to make sure I have enough</p> <p>3 with me to cover a territory. So that might</p> <p>4 be once a week. Other times it might be once</p> <p>5 a month. I mean, it's not a regular thing</p> <p>6 that you have to do on a weekly basis.</p> <p>7 Q. Has Crossmark ever required you to</p> <p>8 stop by customer locations on your way from</p> <p>9 your home to your first work location? So you</p> <p>10 already know where you're going, you know what</p> <p>11 your first work location of the day is. Does</p> <p>12 Crossmark ever require you to make any stops</p> <p>13 from your home to the work location?</p> <p>14 A. Let me see if I understand you.</p> <p>15 You mean another store than the one I planned</p> <p>16 on going to?</p> <p>17 Q. Yes. Let's go with that.</p> <p>18 A. All right. I have been required</p> <p>19 to stop at the office for one thing or</p> <p>20 another. I've also been required to stop at a</p> <p>21 store. We don't do it anymore. Maybe we had</p> <p>22 to write up a credit for something that</p> <p>23 happened. Or there's an item they're pulling</p> <p>24 off the shelf. I might have to run in and do</p> <p>25 that on my way.</p>

21 (Pages 78 to 81)

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1 L. WEIGNER
 2 A. No.
 3 Q. When you testified that overtime
 4 would not be approved that's simply
 5 speculation on your part, correct?
 6 A. Correct.
 7 MR. FOX: Nothing further.
 8 THE WITNESS: Good.
 9 MR. BOZEMAN: Okay. I'm done,
 10 too.
 11 (Time Noted: 2:15 p.m.)
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

LORETTA WEIGNER

Subscribed and sworn to before me
 this ____ day of _____, 2008.

Page 99

1 CERTIFICATE
 2 STATE OF NEW YORK)
 3)
 4 : ss.
 5 COUNTY OF NEW YORK)

6 I, FRANCIS X. FREDERICK, a Notary
 7 Public within and for the State of New
 8 York, do hereby certify:

9 That LORETTA WEIGNER, the witness
 10 whose deposition is hereinbefore set
 11 forth, was duly sworn by me and that
 12 such deposition is a true record of the
 13 testimony given by the witness.

14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage, and that I
 17 am in no way interested in the outcome
 18 of this matter.

19 IN WITNESS WHEREOF, I have
 20 hereunto set my hand this 1st day of
 21 December, 2008.

22
 23
 24 FRANCIS X. FREDERICK
 25

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1
 2 ----- I N D E X -----
 3 WITNESS EXAMINATION BY PAGE
 4 LORETTA WEIGNER MR. FOX 4, 97
 5 MR. BOZEMAN 89
 6
 7
 8
 9

10 ----- INFORMATION REQUESTS -----
 11 DIRECTIONS: NONE
 12 RULINGS: NONE
 13 TO BE FURNISHED: NONE
 14 REQUESTS: NONE
 15 MOTIONS: 90, 92
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

16 ----- EXHIBITS -----
 17 DEFENDANT'S FOR ID.
 18 Exhibit 7
 19 Employment Acknowledgement bearing
 20 production number CMK 000398..... 75
 21 ----- EXHIBITS -----
 22 PLAINTIFF'S FOR ID.
 23 Exhibit 1
 24 five-page e-mail string..... 93
 25

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1 NAME OF CASE: JOHNSTON v. DANNON
 2 DATE OF DEPOSITION: NOVEMBER 24, 2008
 3 NAME OF WITNESS: LORETTA WEIGNER
 4 Reason codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8 Page _____ Line _____ Reason _____
 9 From _____ to _____
 10 Page _____ Line _____ Reason _____
 11 From _____ to _____
 12 Page _____ Line _____ Reason _____
 13 From _____ to _____
 14 Page _____ Line _____ Reason _____
 15 From _____ to _____
 16 Page _____ Line _____ Reason _____
 17 From _____ to _____
 18 Page _____ Line _____ Reason _____
 19 From _____ to _____
 20 Page _____ Line _____ Reason _____
 21 From _____ to _____
 22 Page _____ Line _____ Reason _____
 23 From _____ to _____
 24
 25

LORETTA WEIGNER

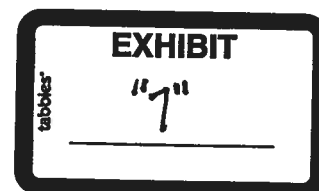
26 (Pages 98 to 101)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KATHLEEN JOHNSON, LORETTA : NO. 08-1525
WEIGNER and JANICE : (SDW)
FAHRENHOLTZ, on behalf of :
themselves and all others :
similarly situated, :
Plaintiffs :
vs. :
CROSSMARK, INC., and the :
DANNON COMPANY, :
Defendants :

Philadelphia, Pennsylvania
Thursday, December 11, 2008

Deposition of JAMES POSTIGLIONE,
taken at the Marriott Courtyard Hotel at
Philadelphia Airport, 8900 Bartram Avenue, on
the above date, beginning at approximately
3:45 p.m., before Jessica Haddix, Registered
Professional Reporter and Notary Public.



<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 WAYNE D. BOZEMAN, ESQUIRE 4 POWELL BOZEMAN 5 301 Joseph Drive 6 West Chester, PA 19380 7 8 Counsel for Plaintiffs 9 10 STEPHEN E. FOX, ESQUIRE 11 FISH & RICHARDSON, P.C. 12 1717 Main Street 13 Suite 5000 14 Dallas, TX 75201 15 Counsel for Defendants 16 --- 17 18 19 20 21 22 23 24 25 (Index at end of transcript.)</p>	<p style="text-align: right;">Page 4</p> <p>1 James Postiglione 2 Q. Like this where a lawyer asks you -- 3 A. No. 4 Q. Do you understand this afternoon 5 that you're under oath? 6 A. Yes. 7 Q. You understand that you're 8 testifying to the truth to the best of your 9 ability? 10 A. Right. 11 Q. You understand that there are 12 penalties for perjury if it's learned that 13 your testimony is not truthful? 14 A. Uh-huh. 15 Q. Is that a yes? 16 A. Yes. 17 Q. The next ground rule that will make 18 things go more comfortably for us is, number 19 one, allow me to finish asking a question 20 before you begin to answer, and I will 21 likewise allow you to finish answering before 22 I pose a new question to you. 23 A. Okay. 24 Q. Also, if you please answer each of 25 the questions with a verbal response because</p>
<p style="text-align: right;">Page 3</p> <p>1 2 JAMES POSTIGLIONE, after having 3 been first duly sworn, was examined and 4 testified as follows: 5 BY MR. FOX: 6 Q. Would you state your name for the 7 record, please? 8 A. Yes. James G. Postiglione. 9 Q. Mr. Postiglione, my name is Steve 10 Fox. We met before the deposition began. I 11 think, as you know, I represent the two 12 defendants in this lawsuit, Crossmark and 13 Dannon, both of whom were sued by Kathleen 14 Johnston, Loretta Weigner, and Janice 15 Fahrenholtz. 16 Before we begin the formal 17 process of taking your deposition or the 18 substantive part of the deposition, can you 19 tell me whether or not you have ever been 20 deposed? 21 MR. BOZEMAN: You have to 22 answer it. 23 THE WITNESS: What is deposed? 24 MR. BOZEMAN: Like this. 25 BY MR. FOX:</p>	<p style="text-align: right;">Page 5</p> <p>1 James Postiglione 2 the court reporter is trying to record 3 accurately the conversation that we have, and 4 if we use nonverbal expressions, she won't be 5 able to record that accurately. 6 Is that acceptable? 7 A. That's acceptable. 8 Q. If you don't understand a question I 9 pose to you at any point during the 10 deposition, please ask me to repeat it or 11 rephrase it, and I will be happy to do so. 12 A. Okay. 13 Q. Can we agree that if you answer a 14 question during the deposition, that you 15 understood it at the time I posed it to you? 16 A. Yes. 17 Q. Are you represented in this 18 deposition today by the law firm of Powell 19 Bozeman? 20 A. Yes. 21 Q. Have you signed a document in which 22 you formally retained the Powell Bozeman law 23 firm? 24 A. Yes. 25 Q. Have you signed a consent form</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 26</p> <p>1 James Postiglione</p> <p>2 Q. Who?</p> <p>3 A. Brenda Holmes.</p> <p>4 Q. Did anybody else tell you that?</p> <p>5 A. Well, I mean, that's who I reported</p> <p>6 to.</p> <p>7 Q. So, the answer is, no, just Brenda</p> <p>8 Holmes?</p> <p>9 A. Brenda Holmes -- well, no. The</p> <p>10 company policy is no overtime.</p> <p>11 Q. I'm going to show you a document</p> <p>12 that shows that that's not true; that the</p> <p>13 company policy is that if you work more than</p> <p>14 40 hours, you record all time worked, and</p> <p>15 you're paid overtime.</p> <p>16 A. Okay.</p> <p>17 Q. So, this idea that the company</p> <p>18 doesn't pay overtime, who told you that?</p> <p>19 A. That's what we were told.</p> <p>20 Q. By whom?</p> <p>21 A. By our company.</p> <p>22 Q. Who?</p> <p>23 A. Brenda Holmes.</p> <p>24 Q. Brenda Holmes worked on the</p> <p>25 Land-o-Lakes --</p>	<p style="text-align: right;">Page 28</p> <p>1 James Postiglione</p> <p>2 Q. One second, please.</p> <p>3 You were told by Brenda Holmes</p> <p>4 that you could only record for each day worked</p> <p>5 20 minutes of admin time?</p> <p>6 A. Yes.</p> <p>7 Q. So, if I show you records that you</p> <p>8 yourself created -- that is, the information</p> <p>9 that you input into the SalesTrak --</p> <p>10 reflecting that you put in more than 20</p> <p>11 minutes of admin time on specific days, how</p> <p>12 are you going to be able to explain that?</p> <p>13 A. Well, whatever I put in is still</p> <p>14 going to come out to 40 minutes -- I mean,</p> <p>15 it's going to come out to 40 hours.</p> <p>16 Q. Well, but you're telling me that you</p> <p>17 were instructed to only put down 20 minutes of</p> <p>18 admin time per day, correct?</p> <p>19 A. Right.</p> <p>20 Q. So, if, in fact, you put down more</p> <p>21 than 20 minutes of admin time --</p> <p>22 A. Some days you did put more than</p> <p>23 20-minute admin time in. You had no choice,</p> <p>24 but you were only supposed to put 20-minute</p> <p>25 admin time.</p>
<p style="text-align: right;">Page 27</p> <p>1 James Postiglione</p> <p>2 A. She was our supervisor. She was the</p> <p>3 supervisor on the dedicated team.</p> <p>4 Q. Let me just make sure we get this</p> <p>5 clearly into the record.</p> <p>6 Brenda Holmes was a</p> <p>7 Land-o-Lakes --</p> <p>8 A. No. She was a Crossmark employee.</p> <p>9 Q. She worked on the Land-o-Lakes</p> <p>10 dedicated team?</p> <p>11 A. Right.</p> <p>12 Q. Did Brenda Holmes have</p> <p>13 responsibility for retail representatives on</p> <p>14 any other team besides Land-o-Lakes?</p> <p>15 A. No, just Land-o-Lakes.</p> <p>16 Q. So, tell me what you claim she said</p> <p>17 about recording administrative time.</p> <p>18 A. That we were only allowed 20</p> <p>19 minutes.</p> <p>20 Q. 20 minutes in the morning, and 20</p> <p>21 minutes in the evening?</p> <p>22 A. 20-minute admin time; that's it.</p> <p>23 Q. So, you were only supposed to record</p> <p>24 20 minutes of admin time --</p> <p>25 A. Admin time.</p>	<p style="text-align: right;">Page 29</p> <p>1 James Postiglione</p> <p>2 Q. Well, what is it? Did you follow</p> <p>3 your supervisor's instruction or didn't --</p> <p>4 A. Yes, I did.</p> <p>5 Q. You're telling me that some days you</p> <p>6 didn't because some days you entered more than</p> <p>7 20 minutes administrative time.</p> <p>8 A. I told you I put in 20-minute admin</p> <p>9 time; that's what I'm saying, 20-minute admin</p> <p>10 time.</p> <p>11 (Exhibit D-8 marked for</p> <p>12 identification.)</p> <p>13 BY MR. FOX:</p> <p>14 Q. Mr. Postiglione, I am handing you</p> <p>15 what I will represent to you is information</p> <p>16 from SalesTrak. As you can see, your name is</p> <p>17 reflected on this particular piece of paper.</p> <p>18 There is a column for activity</p> <p>19 date, and then a column for hours spent</p> <p>20 engaging in a particular activity, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So, if you look down in the middle</p> <p>23 of the page, August 13, 2008, do you see the</p> <p>24 entry for admin time?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 38</p> <p>1 James Postiglione</p> <p>2 devices?</p> <p>3 A. No.</p> <p>4 Q. How much time do you claim you were</p> <p>5 underpaid each week as a result of this</p> <p>6 alleged computer rounding error?</p> <p>7 A. I would say at least an hour and a</p> <p>8 half a day easy.</p> <p>9 Q. Because of the computer rounding</p> <p>10 error?</p> <p>11 A. No, because of the work that I did</p> <p>12 that I didn't get paid for.</p> <p>13 Q. I'll get --</p> <p>14 A. Administrative time.</p> <p>15 Q. I'm going to get to that in a</p> <p>16 minute. I want to focus just on the computer</p> <p>17 rounding error, this allegation that there was</p> <p>18 a computer rounding error.</p> <p>19 How much time do you claim you</p> <p>20 were underpaid each day or each pay period --</p> <p>21 A. The five minutes.</p> <p>22 Q. So, that would be one minute a day?</p> <p>23 A. Exactly.</p> <p>24 Q. The amount of the alleged unpaid</p> <p>25 time is minimal; that is because of this</p>	<p style="text-align: right;">Page 40</p> <p>1 James Postiglione</p> <p>2 I want to focus just on the amount of time you</p> <p>3 spent in the morning.</p> <p>4 A. It depended on how many store calls</p> <p>5 I had, what I had to print out for the day.</p> <p>6 Q. Again, it's printing out the project</p> <p>7 detail, and it's checking your e-mail?</p> <p>8 A. Right.</p> <p>9 Q. So, how long would that take on</p> <p>10 average each morning?</p> <p>11 A. On average each morning, I would say</p> <p>12 about 40 minutes.</p> <p>13 Q. Now, when you printed a document,</p> <p>14 you went to your computer, you -- I suppose</p> <p>15 you opened the document on your computer, and</p> <p>16 then hit print?</p> <p>17 A. Well, yeah, but don't forget, I</p> <p>18 had -- if I had 14 store calls that day, I had</p> <p>19 to print out a copy for every project I had to</p> <p>20 do.</p> <p>21 Q. But after opening up a document and</p> <p>22 hitting print, you didn't have to do anything</p> <p>23 else but go to the printer and retrieve the</p> <p>24 piece of paper, correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 James Postiglione</p> <p>2 computer rounding error?</p> <p>3 A. I guess, yes.</p> <p>4 Q. Let's focus on your allegations</p> <p>5 about administrative time. I asked you</p> <p>6 earlier what duties you performed as a retail</p> <p>7 representative, and with respect to -- I want</p> <p>8 to focus on the administrative duties that you</p> <p>9 performed, not the in-store duties. You said</p> <p>10 that you checked e-mails and you printed out</p> <p>11 your projects.</p> <p>12 Did you do anything else in the</p> <p>13 morning by way of an administrative task?</p> <p>14 A. Well, that took enough time; that</p> <p>15 took long to print out your projects, check</p> <p>16 e-mails, and get everything ready for your</p> <p>17 day.</p> <p>18 Q. How long did it take you to perform</p> <p>19 those tasks in the morning?</p> <p>20 A. It depended on how many store calls</p> <p>21 I had that day.</p> <p>22 Q. So, it varied each day?</p> <p>23 A. Yeah. Well, I did a lot at night,</p> <p>24 too.</p> <p>25 Q. We're not talking about night yet.</p>	<p style="text-align: right;">Page 41</p> <p>1 James Postiglione</p> <p>2 Q. Did you have a hand-held device that</p> <p>3 you used?</p> <p>4 A. No.</p> <p>5 Q. So, it's your estimate that on</p> <p>6 average it took you 40 minutes to check e-mail</p> <p>7 and print out the project detail?</p> <p>8 A. Right.</p> <p>9 Q. With respect to the afternoon or the</p> <p>10 end of the day, describe for me the</p> <p>11 administrative tasks that you performed.</p> <p>12 A. Well, you had to put in all the</p> <p>13 stuff that you reported that day, you had to</p> <p>14 go home, open up your computer again, and</p> <p>15 every project that you printed, you had to put</p> <p>16 in the computer, you had to answer the</p> <p>17 questions.</p> <p>18 Don't forget, a lot of times</p> <p>19 the computer would freeze. You would be stuck</p> <p>20 on the computer for a long time.</p> <p>21 Q. Now, when the computer froze on you,</p> <p>22 was that your fault or the --</p> <p>23 A. No.</p> <p>24 Q. -- computer's?</p> <p>25 A. It's the system. It's the Crossmark</p>

11 (Pages 38 to 41)

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1 James Postiglione
 2 computer system.
 3 Q. So, it was never your computer's
 4 fault?
 5 A. No.
 6 Q. So, other than inputting data into
 7 the computer system, what other tasks did you
 8 perform at the end of the day?
 9 A. It depended. Sometimes we had to
 10 download pictures, and then twice a month we
 11 had to schedule our stores out, which means
 12 that if I had 60 stores, I had to schedule
 13 them out for each day for that whole 15 days,
 14 whatever it was.
 15 We used to schedule it out
 16 twice a month. So, that would take a lot of
 17 time, because you would have to schedule your
 18 stores out to your territory, where you were
 19 going to go Monday, where you were going to go
 20 Tuesday, where you were going to go Wednesday,
 21 for three weeks.
 22 Q. That was twice a month?
 23 A. Twice a month.
 24 Q. How long did that activity take?
 25 A. A long time.

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1 James Postiglione
 2 Q. How long on average?
 3 A. I would say at least three hours.
 4 Q. Each time you performed this task of
 5 scheduling stores --
 6 A. Yes. Sorry.
 7 Q. Each time you performed the task of
 8 scheduling stores, it took you three hours?
 9 A. Yes.
 10 Q. How long would it take you to input
 11 data on those days that you were not
 12 scheduling stores?
 13 A. To input data, at least an hour.
 14 Q. How often did you have to download
 15 and transfer pictures?
 16 A. Four times a year.
 17 Q. So, that was a very infrequent
 18 exercise, I take it?
 19 A. Yeah, four times a year.
 20 Q. Other than inputting data on a
 21 regular basis, what other administrative tasks
 22 did you perform at the end of the day?
 23 A. Well, basically, that's it.
 24 Q. Okay. Now, do you have any personal
 25 knowledge of what kind of administrative tasks

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1 James Postiglione
 2 employees on teams other than the Land-o-Lakes
 3 dedicated team perform at the beginning of
 4 their workday?
 5 A. No.
 6 Q. Do you have any personal knowledge
 7 of what kind of administrative task employees
 8 on teams other than the Land-o-Lakes dedicated
 9 team perform at the end of the workday?
 10 A. No.
 11 Q. When you began using SalesTrak, did
 12 you obtain some training in order to know how
 13 to use it?
 14 A. Yeah.
 15 Q. When you entered information into
 16 SalesTrak, you used different categories for
 17 reporting your time, correct?
 18 A. Yes.
 19 Q. One category would be in-store time?
 20 A. Right.
 21 Q. One category would be administrative
 22 time?
 23 A. Yes.
 24 Q. One category might be driving time?
 25 A. Right.

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1 James Postiglione
 2 Q. Were there any other categories of
 3 time?
 4 A. Well, training time. Sometimes if
 5 we had training, we had to put that in.
 6 Q. All right. Did you understand while
 7 working for Crossmark that it was the
 8 company's policy that a retail representative
 9 was supposed to accurately record in SalesTrak
 10 all time spent performing administrative
 11 tasks?
 12 A. Yes.
 13 Q. Did you understand that the retail
 14 representative was not supposed to estimate
 15 the amount of time that he or she spent
 16 performing administrative tasks?
 17 A. Yes.
 18 Q. So, that is, the retail
 19 representative was supposed to accurately
 20 record the administrative time --
 21 A. Yes.
 22 Q. -- in SalesTrak?
 23 Now, we talked just a little
 24 earlier in the deposition about your
 25 interaction with Brenda Holmes.

<p style="text-align: right;">Page 50</p> <p>1 James Postiglione</p> <p>2 Then it goes on to say,</p> <p>3 "Associates should NOT," and not is all</p> <p>4 capitalized, "simply use a rule of thumb that</p> <p>5 administrative time is about 15 or 30 minutes</p> <p>6 per day. Instead, associates are expected to</p> <p>7 record actual administrative time worked."</p> <p>8 Did I read that paragraph</p> <p>9 correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Did you understand that was</p> <p>12 Crossmark's --</p> <p>13 A. Yes.</p> <p>14 Q. -- written policy?</p> <p>15 A. Yes.</p> <p>16 Q. So, I take it then, based upon your</p> <p>17 answer, that you understood that if a retail</p> <p>18 representative did not report all time spent</p> <p>19 performing administrative tasks, that that</p> <p>20 retail representative was violating company</p> <p>21 policy?</p> <p>22 A. Yes.</p> <p>23 Q. Other than your conversation with</p> <p>24 Miss Holmes, do you have any reason to believe</p> <p>25 that it was not Crossmark's policy for retail</p>	<p style="text-align: right;">Page 52</p> <p>1 James Postiglione</p> <p>2 worked?</p> <p>3 A. No.</p> <p>4 Q. Now, your claim that you were</p> <p>5 instructed by Miss Holmes not to record more</p> <p>6 than 20 minutes of administrative time per day</p> <p>7 is unique to you, is it not?</p> <p>8 A. No. I mean, that's what we were</p> <p>9 told.</p> <p>10 Q. When you say --</p> <p>11 A. Our division. Our unit.</p> <p>12 Q. That would be the Land-o-Lakes team?</p> <p>13 A. That would be our division. Like,</p> <p>14 Land-o-Lakes -- the Brenda Holmes' people that</p> <p>15 worked under her besides me.</p> <p>16 Q. How much time do you claim that</p> <p>17 Crossmark failed to pay you for administrative</p> <p>18 tasks each day?</p> <p>19 A. Well, I would say at least two</p> <p>20 hours, two to three hours a day.</p> <p>21 Q. Is it possible for you to -- I'm</p> <p>22 sorry -- that would be two to three hours a</p> <p>23 day, which would cover the administrative</p> <p>24 tasks in the morning and the administrative</p> <p>25 tasks in the evening?</p>
<p style="text-align: right;">Page 51</p> <p>1 James Postiglione</p> <p>2 representatives to report all administrative</p> <p>3 tasks performed at any time by the retail</p> <p>4 representative as administrative time?</p> <p>5 A. Well, according to her, that was</p> <p>6 Crossmark's policy.</p> <p>7 Q. But other than speaking with her, do</p> <p>8 you have any other reason --</p> <p>9 A. Right. No.</p> <p>10 Q. Do you have any personal knowledge</p> <p>11 that any retail representative on the</p> <p>12 Land-o-Lakes team, other than yourself, was</p> <p>13 not following Crossmark's policy with respect</p> <p>14 to reporting all administrative time worked?</p> <p>15 A. No.</p> <p>16 Q. Do you have any personal knowledge</p> <p>17 that any retail representative on a team other</p> <p>18 than the Land-o-Lakes dedicated team was not</p> <p>19 following Crossmark's policy for reporting all</p> <p>20 administrative time worked?</p> <p>21 A. No.</p> <p>22 Q. Do you have any personal knowledge</p> <p>23 that any employees on teams other than the</p> <p>24 Land-o-Lakes dedicated team were instructed</p> <p>25 not to report all of their administrative time</p>	<p style="text-align: right;">Page 53</p> <p>1 James Postiglione</p> <p>2 A. I am talking about a combined day.</p> <p>3 Q. Is it possible for you to tell me on</p> <p>4 average how much of that time, the two or</p> <p>5 three hours, was in the morning --</p> <p>6 A. No.</p> <p>7 Q. -- or how much was in the evening?</p> <p>8 A. Not really. It varied.</p> <p>9 Q. Did you ever complain to anybody at</p> <p>10 Crossmark about this alleged instruction you</p> <p>11 got from Miss Holmes to not record --</p> <p>12 A. No.</p> <p>13 Q. -- more than 20 minutes</p> <p>14 administrative time?</p> <p>15 A. No.</p> <p>16 Q. You also claim that Crossmark failed</p> <p>17 to compensate you for the time you spent</p> <p>18 driving from your home to your first work</p> <p>19 location of the day, and driving from your</p> <p>20 last work location to your home, correct?</p> <p>21 A. Yes.</p> <p>22 Q. In what territory did you work for</p> <p>23 Crossmark's Land-o-Lakes team?</p> <p>24 A. Well, I had a big territory.</p> <p>25 Q. Okay. Tell me about the territory.</p>

14 (Pages 50 to 53)

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1 James Postiglione

2 40-hour week.

3 Basically, we're talking
4 here -- the bottom line is, you could have
5 never done the job -- to do the job right, you
6 had -- it was going to take you a lot more
7 time than you were supposed to do it. Policy
8 or no policy, we worked for a broker company
9 that paid us to do the job.

10 In order to do the job right,
11 which is the way we did it, you exceeded the
12 time that you were supposed to because you had
13 to do the job right.

14 They expected you to stay in
15 the store for 30 minutes. There is no way you
16 could do a store call in 30 minutes. It's
17 impossible, not with the tasks we had; that's
18 what I'm saying.

19 It ain't about drive time, five
20 minutes. It's about getting paid for the time
21 we spent over and beyond what we were supposed
22 to; that's the bottom line.

23 Q. With respect to this idea that
24 you -- you understand, don't you, that as part
25 of this class action or collective action, the

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1 James Postiglione

2 only time you're asking to be paid for is
3 administrative time at the beginning and end
4 of the day, drive time at the beginning and
5 end of the day, and any computer error that
6 resulted in some time not equaling a full
7 hour, right?

8 A. Yes.

9 Q. So, you're not suing Crossmark in
10 this lawsuit for this idea that store calls
11 lasted more than 30 minutes a day --

12 A. We're suing about hours, hours that
13 we were not paid for.

14 Q. Okay.

15 A. Whether we were told 20 minutes or
16 an hour.

17 Q. Now, we can agree, can we not, that
18 your drive time was occasionally longer than
19 the drive time of other persons on the
20 Land-o-Lakes team?

21 A. I don't know. I don't know
22 everybody's territory. I only know my
23 territory.

24 Q. So, you're not here saying that you
25 know exactly the amount of time that other

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1 James Postiglione

2 Land-o-Lakes representatives drove to their
3 first place of business --

4 A. No.

5 Q. -- or drove from their last place of
6 business to home, correct?

7 A. Yes.

8 Q. You're not saying that? That's a
9 terrible question. Hang on.

10 A. I don't know.

11 Q. You're not here to say that you know
12 how much time any other Land-o-Lakes
13 representative took driving in the morning
14 from home to their first place of work?

15 A. I don't know. No.

16 Q. You're not saying that you're here
17 to tell me or represent that you know how much
18 time other Land-o-Lakes representatives spent
19 driving from their last place of work to home?

20 A. I don't know.

21 Q. Okay. Would the same be true with
22 respect to representatives on other teams?

23 A. Yeah. I don't know.

24 Q. Let me make sure I have this right
25 from our earlier discussion.

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1 James Postiglione

2 When you drove from your first
3 work location to other stores, including the
4 last store location, you recorded the drive
5 time, did you not?

6 A. Yeah, I recorded it, but it wasn't
7 right.

8 Q. Do you recall receiving the
9 Crossmark full-time associate policy manual,
10 May of 2004, during your employment at the
11 company?

12 A. Yeah. Uh-huh.

13 Q. Let me mark this as an exhibit.
14 (Exhibit D-9 marked for
15 identification.)

16 BY MR. FOX:

17 Q. Let's look, first of all, at Exhibit
18 9; that's called Employment Acknowledgment.

19 Do you see the signature at the
20 bottom of the page?

21 A. Yes.

22 Q. Is that yours?

23 A. Yes, it is.

24 Q. So, this document reflects that you
25 received the document or the exhibit that

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 James Postiglione</p> <p>2 we're now looking at, which is Exhibit 3, the</p> <p>3 full-time associate policy manual?</p> <p>4 A. Yes.</p> <p>5 Q. So, if we look in the associate</p> <p>6 manual concerning payment for drive time, on</p> <p>7 Page 16 there is a heading, Travel Time/Drive</p> <p>8 Time.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. It says, "Nonexempt associates are</p> <p>12 on the clock once the associate arrives at the</p> <p>13 first work location of the day and goes off</p> <p>14 the clock once the associate leaves the last</p> <p>15 work location of the day."</p> <p>16 "Drive time between work</p> <p>17 locations during the day is to be recorded as</p> <p>18 time worked. However, time spent on personal</p> <p>19 stops between work locations is not considered</p> <p>20 drive time."</p> <p>21 "For retail associates certain</p> <p>22 territories may require longer drive times to</p> <p>23 the first work location of the day. The</p> <p>24 supervisor will determine if this applies to</p> <p>25 the associate. Pay for travel time worked is</p>	<p style="text-align: right;">Page 64</p> <p>1 James Postiglione</p> <p>2 being paid for drive time?</p> <p>3 A. No.</p> <p>4 Q. Did you ever tell anybody at</p> <p>5 Crossmark that you were not accurately</p> <p>6 recording your drive time?</p> <p>7 A. No.</p> <p>8 Q. What did you do when you left your</p> <p>9 house and drove to the first work location,</p> <p>10 other than simply drive the car?</p> <p>11 A. That's it.</p> <p>12 Q. Did you talk on the phone to any</p> <p>13 sales associates or supervisors?</p> <p>14 A. No.</p> <p>15 Q. You didn't have a synch device or a</p> <p>16 hand-held device.</p> <p>17 So, I take it you didn't look</p> <p>18 at one of those?</p> <p>19 A. No.</p> <p>20 Q. So, you didn't perform any tasks for</p> <p>21 Crossmark in your car while you were driving.</p> <p>22 You simply drove from your home</p> <p>23 to your first work location?</p> <p>24 A. Yes.</p> <p>25 Q. At the end of the day, when you left</p>
<p style="text-align: right;">Page 63</p> <p>1 James Postiglione</p> <p>2 included in the associate's project pay or</p> <p>3 hourly rate."</p> <p>4 Did you understand while</p> <p>5 working for Crossmark that you were supposed</p> <p>6 to accurately record the amount of drive time</p> <p>7 that you spent driving between --</p> <p>8 A. Yes.</p> <p>9 Q. Just a second.</p> <p>10 Did you understand while</p> <p>11 working for Crossmark that you were supposed</p> <p>12 to accurately record the amount of time that</p> <p>13 you spent driving from your first work</p> <p>14 location your last work location?</p> <p>15 A. Yes.</p> <p>16 Q. But you're telling me you didn't do</p> <p>17 that?</p> <p>18 A. No.</p> <p>19 Q. No, you didn't do it?</p> <p>20 A. No, I didn't do it.</p> <p>21 Q. Did you ever complain to anybody at</p> <p>22 Crossmark about the amount of drive time that</p> <p>23 you were having to undertake?</p> <p>24 A. No.</p> <p>25 Q. Did you ever complain about not</p>	<p style="text-align: right;">Page 65</p> <p>1 James Postiglione</p> <p>2 your last work location and drove home, did</p> <p>3 you perform any tasks?</p> <p>4 A. No.</p> <p>5 Q. You simply drove the car?</p> <p>6 A. Yes.</p> <p>7 Q. Did Crossmark require you to</p> <p>8 complete paperwork during your commute at the</p> <p>9 beginning of the day or at the end of the day?</p> <p>10 A. Paperwork?</p> <p>11 Q. Did you have to complete paperwork</p> <p>12 in the car during the commute?</p> <p>13 A. No.</p> <p>14 Q. You weren't required by Crossmark to</p> <p>15 perform any duties during your commute at the</p> <p>16 beginning of the day or at the end of the day,</p> <p>17 correct?</p> <p>18 A. Just what we did in-store.</p> <p>19 Q. Right. So, my question is this:</p> <p>20 Crossmark didn't require you to complete any</p> <p>21 duties while you were driving at the beginning</p> <p>22 of the day?</p> <p>23 A. No.</p> <p>24 Q. No, they did not?</p> <p>25 A. No.</p>

17 (Pages 62 to 65)

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1 James Postiglione

2 Q. Now --

3 A. They did not.

4 Q. And Crossmark didn't require you to
5 perform any duties during your commute at the
6 end of the workday, did it?

7 A. Not while we were driving, no.

8 Q. How much time are you claiming that
9 you're owed for the drive time at the
10 beginning of the day and at the end of the
11 day?

12 A. I don't know. I really can't answer
13 that.

14 Q. As you sit here today, do you have
15 any estimate or any sense of the amount of
16 time that you say you have not been paid for
17 drive time at the beginning of the day or at
18 the end of the day?

19 A. No, because it's combined. I'm not
20 just talking about drive time. I'm talking
21 about drive time and administrative time.
22 It's kind of combined.

23 Q. But we can agree that you didn't
24 perform administrative tasks while you were
25 driving?

1 James Postiglione

2 PA.

3 Q. What's the ZIP code there?

4 A. 19145.

5 Q. Are you currently working?

6 A. Not at the moment.

7 Q. Are you employed at the present
8 time?

9 A. I will be getting employed, yes.

10 Q. When?

11 A. Probably next week.

12 Q. But you're not working today?

13 A. No.

14 Q. Where are you going to work next
15 week?

16 A. I'll be working for a company called
17 Acosta (ph.).

18 Q. What will you be doing for Acosta?

19 A. The same type of work that I am
20 doing for Crossmark.

21 Q. That you did for Crossmark?

22 A. Yes.

23 Q. Will you work in the same territory?

24 A. Basically, yes.

25 Q. Did you graduate from high school?

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Page 69

1 James Postiglione

2 A. No.

3 Q. No, you did not?

4 A. No, I did not.

5 Q. Let's look at your Declaration,
6 which was Exhibit 7.

7 Do you still have that?

8 A. Okay.

9 Q. Look at the second page of that,
10 please.

11 A. Right.

12 Q. Under the heading, Administrative
13 Time, Paragraph 8.

14 Do you see that?

15 A. Yes.

16 Q. Never mind, Mr. Postiglione.

17 Can you tell me, sir, where you
18 were born?

19 A. I was born in the United States.

20 Q. Where?

21 A. Philadelphia, Pennsylvania.

22 Q. Where did you grow up?

23 A. Philadelphia, Pennsylvania.

24 Q. What is your current home address?

25 A. 2745 South 17th Street, Philadelphia

1 James Postiglione

2 A. Yes -- no. GED.

3 Q. Did you attend college?

4 A. No.

5 Q. Have you ever served in the
6 military?

7 A. No.

8 Q. Are you married?

9 A. Yes.

10 Q. For how long have you been married?

11 A. 29 years.

12 Q. Have you ever been involved in a
13 lawsuit before as a party?

14 A. No.

15 Q. Have you ever been involved in a
16 lawsuit before as a witness?

17 A. No.

18 Q. When did you obtain your position
19 with Acosta?

20 A. Just recently.

21 Q. When were you formally hired or
22 offered a position?

23 A. This week.

24 Q. This week?

25 A. (Indicating.)

18 (Pages 66 to 69)

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1 James Postiglione

2 BY MR. FOX:

3 Q. With respect to training time, that
4 was a separate category from administrative
5 time, correct?

6 A. Yes.

7 Q. So, the four buckets of time, I take
8 it, were in-store time, administrative time,
9 driving time --

10 A. And training time.

11 Q. -- and training time.

12 Were there any other buckets of
13 time?

14 A. No. Just basically those four.

15 Q. So, when you met with your
16 supervisor from time to time, you recorded the
17 meeting time or time spent in those meetings
18 as training?

19 A. Training.

20 Q. The only time you recorded as
21 administrative time was time you spent in the
22 morning or the evening doing different tasks?

23 A. Right.

24 MR. FOX: I don't have anything
25 else at this time.

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1 James Postiglione

2 MR. BOZEMAN: Just one other
3 question.

4 BY MR. BOZEMAN:

5 Q. Do you recall your supervisor ever
6 instructing you to perform administrative
7 tasks and instructing you to record those for
8 pay purposes -- excuse me.

9 A. Well, basically, like I said, you
10 know, we were told 20-minute admin time;
11 that's basically what, you know, I recall.
12 So, whatever we did over and beyond that was
13 on our time.

14 Q. Okay.

15 MR. BOZEMAN: No other
16 questions.

17 MR. FOX: I think we're
18 finished with your deposition for now,
19 Mr. Postiglione. Thank you.

20 THE WITNESS: Thank you.

21 (Witness was excused.)

22 (Deposition concluded at 5:05
23 p.m.)

24

25

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1
2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me upon the
7 deposition of JAMES POSTIGLIONE, taken on
8 December 11, 2008, and that this is a true and
9 correct transcript of same.

10
11
12
13
14
15 _____
16 Jessica Haddix, Registered
17 Professional Reporter and
18 Notary Public
19

20 (The foregoing certification of this
21 transcript does not apply to any reproduction
22 of the same by any means, unless under the
23 direct control and/or supervision of the
24 certifying reporter.)
25

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1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

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21 (Pages 78 to 79)

IMPORTANT NOTIFICATION TO POTENTIAL CLASS MEMBERS

TO: ALL CURRENT OR FORMER EMPLOYEES OF CROSSMARK, INC., WHO HAVE BEEN OR CURRENTLY ARE EMPLOYED AS FULL-TIME OR PART-TIME RETAIL REPRESENTATIVES AT ANY TIME SINCE JANUARY 1, 2006.

FROM: POWELL BOZEMAN, P.A.

RE: RIGHT TO JOIN A LAWSUIT SEEKING TO RECOVER UNPAID COMPENSATION

DATE: _____, 2009

1. PURPOSE OF NOTICE

The purpose of this Notification is to inform you of the existence of a collective action lawsuit in which you may be eligible to participate because you may be "similarly situated" to the named Plaintiffs. This Notification is also intended to advise you how your rights under the federal Fair Labor Standards Act (the "Act") may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit, should you decide that it is appropriate and you choose to do so.

This Notification is also intended to inform you that, if you choose to join this lawsuit, you will designate the named Plaintiffs as your agents to make decisions on your behalf concerning (i) the litigation, (ii) the method and manner of conducting this litigation, (iii) the entering of an agreement with Plaintiffs' counsel concerning fees and costs, and (iv) all other matters pertaining to this lawsuit. The decisions and agreements made and entered into by the named Plaintiffs will be binding on you if you join this lawsuit.

This Notification is also intended to inform you that the court has not made any ruling yet as to whether you are or are not entitled to any overtime compensation. That issue has yet to be determined, and is vigorously contested by CROSSMARK. Moreover, the court has not determined or required the application of any specific formula for determining how much, if any, compensation you may be entitled to receive.

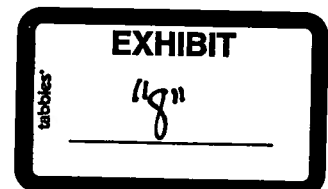
2. DESCRIPTION OF THE LAWSUIT

A lawsuit has been brought by Kathleen Johnston, Loretta Weigner, and Janice Fahrenholtz (the "named Plaintiffs") against CROSSMARK in the United States District Court for the District of New Jersey as Cause No. 08-1525 (SDW). The lawsuit alleges that CROSSMARK failed to provide compensation as required by the Act.

Plaintiffs' lead counsel are:

Ralph A. Powell and Wayne D. Bozeman
POWELL BOZEMAN, P.A.
1900 Knight Circle
Yardley, PA 19067
Telephone: (215) 439-7781
Facsimile: (484) 887-8475

Generally, the overtime provisions of the Act require that, for all hours over forty hours per week that an employee works, the employer must compensate the employee at the rate of one and one-half times his or her regular hourly rate, unless that employee is properly classified as "exempt" from the overtime provisions of the Act. The named Plaintiffs claim that during one or more weeks of their employment with CROSSMARK, they worked in excess of forty hours, but were not paid the overtime at the rate of one and one-half times their hourly rate for the hours they worked in excess of forty. Specifically, the named Plaintiffs allege that from January 2006 until September 2008, a problem with CROSSMARK's computer system caused pay shortages for Retail Representatives. Plaintiffs are suing to recover unpaid overtime compensation for the period from January 1, 2006 until September 1, 2008.



CROSSMARK vigorously denies the Plaintiffs' allegations, and maintains that its compensation policies and practices fully comply with the FLSA.

3. COMPOSITION OF THE CLASS

The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other employees with whom they are similarly situated. Those individuals that the named Plaintiffs allege are similarly situated are current and former employees of CROSSMARK who have been and/or currently are employed as full-time or part-time regular Retail Representatives at any time since January 1, 2006.

This Notification is only for the purpose of determining the identity of those persons who wish to be involved in this case and has no other purpose. Your right to participate in this suit will depend upon a later decision by the United States District Court that you and the representative Plaintiffs are actually "similarly situated."

4. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

If you fit the definition above, that is, you were or currently are employed by CROSSMARK as a full-time or part-time regular Retail Representative at any time from January 1, 2006, you may have a right to participate in this lawsuit.

You may file a consent form to seek to participate in this lawsuit even if you did or did not keep records of your hours worked.

5. HOW TO PARTICIPATE IN THIS LAWSUIT

Enclosed you will find a form entitled "Notice of Consent" ("Consent Form"). If you choose to join this lawsuit and, thus, participate in any recovery that may result from this lawsuit, **it is extremely important that you read, sign and return the Consent Form.**

The signed Consent Form must be postmarked by [DATE]. If your signed Consent Form is not postmarked by [DATE], you will not participate in any recovery obtained against CROSSMARK in this lawsuit. If you have any questions about filling out or sending in the Consent Form, please contact Plaintiffs' counsel listed on page one of this Notice.

6. EFFECT OF JOINING THIS SUIT; NO RETALIATION PERMITTED

If you choose to join in this lawsuit, you will be bound by the judgment, whether it is favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of this class.

If you choose to join this lawsuit, you may be required to (1) appear for a deposition in; (2) respond to written discovery; and/or (3) appear at a trial in Newark, New Jersey.

The named Plaintiffs in this matter have entered into a contingency fee agreement with Plaintiffs' counsel, which means that if there is no recovery, there will be no attorney fees or costs chargeable to you. If there is a recovery, however, Plaintiffs' counsel will receive part of any settlement obtained or money judgment entered in favor of all members of the class.

You may request a copy of the contingency fee agreement executed by the named Plaintiffs in this matter from Plaintiffs' counsel at the address, telephone number, or facsimile number that appears on page one of this notice.

It is a violation of Federal law for CROSSMARK to discharge, or in any manner discriminate or retaliate against you for taking part in this case. If you believe that you have been penalized, discriminated against or disciplined in any ways as a result of your receiving this notification, considering whether to join this lawsuit or actually joining this lawsuit, you should contact Plaintiffs' counsel immediately.

7. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT

If you choose not join this lawsuit, you will not be affected by any judgment or settlement rendered in this case, whether favorable or unfavorable to the class. You will not be entitled to share any amounts recovered by the class. You will be free to file your own lawsuit, subject to any defenses that might be asserted. The pendency of this lawsuit will not stop running of the statute of the limitations as to any claims you might have until you opt-in to it.

8. FURTHER INFORMATION

Further information about this Notification or the lawsuit may be obtained from Plaintiffs' counsel at the address, telephone number, or facsimile number identified on page one of this Notice.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**KATHLEEN JOHNSTON, LORETTA
WEIGNER, and JANICE
FAHRENHOLTZ, on behalf of themselves
and all others similarly-situated,**

Plaintiffs,

v.

**CROSSMARK, INC., and THE DANNON
COMPANY, INC.,**

Defendants.

Civil Action No. 08-1525 (SDW)

CONSENT TO JOIN

I WANT TO JOIN THIS LAWSUIT. I hereby authorize the prosecution of this Fair Labor Standards Act action in my name and on my behalf by Kathleen Johnston, Loretta Weigner, and Janice Fahrenholtz, the "Representative Plaintiffs." I designate these Representative Plaintiffs as my agents to make decisions on my behalf concerning this litigation, including the method and manner of conducting the litigation, the entering of an agreement with their counsel concerning attorney's fees and costs, and all other matters pertaining to the lawsuit.

I understand that the Representative Plaintiffs have entered into a contingency fee agreement with the law office of Powell Bozeman, P.A. that applies to all plaintiffs who join this lawsuit. I understand that I may obtain a copy of the contingency fee agreement on request. By choosing to join this lawsuit, I agree to be bound by the contingency fee agreement.

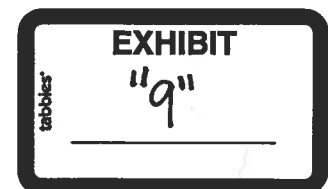
By choosing to join this lawsuit, I understand that I will be bound by the judgment, whether it is favorable or unfavorable. I also understand that I will be bound by, and will share in, any settlement that may be negotiated on behalf of all plaintiffs and approved by the Court.

I acknowledge and understand that if I had chosen not to join this lawsuit, I would not be affected by any judgment rendered or settlement reached in this lawsuit, whether favorable or unfavorable

I hereby consent to join this lawsuit.

Signature

Date



PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

Full Legal Name: _____

Any Other Name Used or Known By: _____

Mailing Address: _____

City, State, and Zip Code: _____

Daytime Telephone: _____

Evening Telephone (optional): _____

Cellular Telephone (optional): _____

E-mail Address (optional): _____